Nicholas R. Maxwell
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September 22, 2023

Megan McLean, Acting WIPP Group Program Manager
Hazardous Waste Bureau - New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

Re: Notice of Opposition to the “Proposed Final Permit” for WIPP and Request for Public Hearing

Dear Megan,

Please find below my notice of opposition to the permit, request for a public hearing and comments.

I. ENTRY OF APPEARANCE.

I, Nicholas R. Maxwell, one of the people of New Mexico, hereby submit my notice of opposition against the draft permit referenced above. I formally request a public hearing to discuss the issues that I raise herein as an Interested Person to the proceeding.

II. CONTEXT AND TERMINOLOGY.

On August 15, 2023, the New Mexico Environment Department (NMED) issued its most recent draft permit for the Waste Isolation Pilot Plant (WIPP), which is a facility designated for hazardous waste. Published by the NMED as the 'Proposed Final Permit,' this second draft is an updated version of a previous draft (now referred to as the ‘First Draft Permit’) made public on December 20, 2022.

Herein, the terms 'Proposed Final Permit', and 'Second Draft Permit' are synonymous and are used interchangeably. The Second Draft Permit incorporates changes to the First Draft Permit resulting from confidential negotiations, as detailed in a subsequent Settlement Agreement and Stipulation, identified by the reference [AR 230611] (now referred to simply as the “Settlement Agreement”). I have no involvement in the Settlement Agreement.

The Second Draft Permit qualifies as a 'draft permit,' in accordance with New Mexico Administrative Code (NMAC) 20.4.1.901 and the Resource Conservation and Recovery Act (RCRA).

III. NATURE AND SCOPE OF THE REQUEST FOR PUBLIC HEARING.

I am an individual participant in this proceeding and request a public hearing to scrutinize changes to the First Draft Permit due to the Settlement Agreement. My concerns are procedural and substantive: NMED lacks clear guidance on requesting a public hearing, violates RCRA's 45-day comment period and fact sheet requirements, and I object to specific permit changes. Details will follow.

IV. ISSUE RAISED: DEFICIENCY OF PROCESS.

Upon reviewing the public notice dated August 15, 2023, I have identified several deficiencies in the process and propose the following issues to be raised for consideration at the hearing:

1. Topic: Lack of Required Information: This public notice falls short of meeting the informational requirements set forth by NMAC 20.1.4.901.C(4)(b) and Title 40 of the Code of Federal Regulations (CFR) §124.10(d)(1)(v). Specifically, it does not provide a brief description outlining how the public can request hearings, which is a mandatory inclusion.

2. Topic: Absence of Fact Sheet: According to NMAC 20.1.4.901.D(1), a comprehensive fact sheet adhering to enumerated requirements must accompany every draft permit for a hazardous waste management facility or activity. Such a fact sheet was notably absent when the public notice for the Second Draft Permit was published, in violation of NMAC 20.1.4.901.D(3).

3. Topic: Insufficient Time for Public Review and Comment: The public notice for the Second Draft Permit indicates that the NMED will accept public comments only until September 22, 2023. This time frame does not provide the public with the required 45-day review and comment period, as stipulated by NMAC 20.4.1.901.A(3) and 40 CFR §124.10(b)(1).

Each of these issues constitutes a separate violation of state and federal rules, thereby rendering the process deficient and inconsistent with regulations and the underlining principles of due process.

Overall, these deficiencies compromise the integrity of the permitting process and impair my ability to meaningfully participate, thereby violating my right to due process as enshrined in the law. These lapses in procedure not only erode my trust but also create an environment where I am unable to fully understand or scrutinize the implications of the permit. This lack of transparency and due process can lead to decisions that may not be in my best interest or that of environmental safety.

V. ISSUE RAISED: OBJECTIONS TO SETTLEMENT-DRIVEN CHANGES IN DRAFT PERMIT.

1. Topic: Permit Revocation (Part 1, Section 1.3.1).

Objection: Lack of Regulatory Consistency and Stringency in Permit Revocation Provisions.

The progression of language from the current permit to the Second Draft Permit indicates a trajectory towards procedural leniency, which presents significant concerns.

In the current permit, the guidelines are clear and straightforward: the permit outlines the conditions under which modifications, suspensions, or revocations may occur. It firmly anchors its stance in pre-established regulatory frameworks without additional stipulations concerning the volume of transuranic (TRU) waste.

The First Draft Permit introduces a direct and unequivocal criterion for permit revocation. If the Land Withdrawal Act (LWA) disposal limit for TRU waste, set at 6.2 million cubic feet, were to be altered by Congress, this would trigger an automatic permit revocation within 30 calendar days. This stance

reflects an intention to uphold strict environmental protection standards and maintains a clear boundary against any potential expansion of waste volume.

Contrastingly, the Second Draft Permit, influenced by the Settlement Agreement, muddles this clarity. Instead of an outright revocation, it introduces a provision for "revocation and re-issuance." This not only weakens the initial strict stance but also provides a pathway for permit reactivation even after revocation, contingent on undefined "cause." Further, by introducing the potential authorization of "additional types of waste," it widens the scope of disposables, risking unforeseen environmental implications.

In essence, the shift from the First Draft Permit's stringent criterion to the Second Draft Permit's diluted provision underscores a retreat from the primary objective of prioritizing environmental protection. As a stakeholder, I believe that any proposed changes to the permit, influenced by the Settlement Agreement or otherwise, must maintain a non-negotiable commitment to environmental safety and public well-being. The ambiguity and potential expansion introduced in the Second Draft Permit, when compared to its predecessors, warrant deeper scrutiny at the forthcoming public hearing.

2. Topic: Permit Application Submittal Date (Part 1, Section 1.6).

Objection: Ambiguity and Potential Lack of Transparency in Permit Application Date Modification.

The evolution of the permit application submittal date from the foundational September 2009 in both the current permit and the First Draft Permit to March 2020 in the Second Draft Permit is more than a mere update—it symbolizes a paradigm shift that warrants public scrutiny. Retaining the September 2009 date in consecutive iterations solidified its importance in creating a stable regulatory framework, capturing specific environmental conditions, and determining the agreed-upon reference data.

The sudden leap to March 2020 in the Second Draft Permit, however, brings with it an eleven-year chasm and an array of unresolved queries. This alteration implies a reliance on potentially contrasting datasets, sidestepping the deep-seated context the 2009 data provided. It also prompts questions about the rationale and transparency behind such a decision, more so because this pivot was noticeably missing from the First Draft Permit.

Adding another layer to this convolution is the NMED's entry in the Table of Changes [AR 230821] accompanying the Second Draft Permit, which tersely states: "The most recent renewal application submittal date was corrected to March 2020." This succinct assertion lacks clarity, leaving stakeholders to ponder the distinction between a "correction" and a substantive change. Such an entry further blurs the lines of regulatory diligence and begs the question: what necessitated this "correction", and why was it not flagged earlier?

In conclusion, this date amendment and its presentation in the Second Draft Permit, coupled with the NMED's minimalistic phrasing in the Table of Changes, weave a complex tapestry of uncertainties. It's essential that these intricacies are unraveled in a forum that emphasizes transparency, ensuring the permitting process remains rigorous, justifiable, and trustworthy. The call for a public hearing on this matter is not just appropriate—it's indispensable.

3. Topic: New Requirements for the Duty to Reapply (Part 1, Section 1.7.3).

Objection: Potential for Subjectivity and Misrepresentation in TRU Waste Inventory Estimations.

The Duty to Reapply is not just a procedural formality; it is a robust mechanism that ensures the operation of facilities, like the WIPP facility, is stringently reviewed, renewed, and revalidated periodically. Such checks are integral to environmental safety and public trust.

In the current permit, there existed an unequivocal clarity: Permittees had to submit an application for a new Permit at least 180 days before the permit's expiration. The First Draft Permit echoed this same clarity, refraining from introducing alterations or amendments.

However, the Second Draft Permit, post the Settlement Agreement, introduces a new dimension. The Duty to Reapply is stretched to encompass an additional obligation, that the Permittees begin a "pre-application public participation process" a whole 360 days before the expiration. On the surface, it might seem like a win for public participation—after all, doesn't this provide a longer window for stakeholder engagement? Yet, the waters are muddied by a subsequent stipulation: the necessity to provide an "inventory of TRU waste from the DOE complex," and, crucially, the basis for how those quantities were estimated.

This proviso is both revealing and concerning. For one, it implicitly recognizes the dynamic and possibly expanding nature of TRU waste volumes. It's a tacit acknowledgment of uncertainty, and with it, potential risk. Moreover, by placing the onus on Permittees to provide the "basis for estimated quantities," the provision appears to offer them a leeway to control the narrative. The room for subjectivity and interpretation in such estimates is undeniable and poses substantial environmental and procedural risks.

The NMED's mention in the Table of Changes, stating the need for the "basis for how the quantities were estimated," further amplifies these concerns. It is essential to scrutinize what methodologies, assumptions, and data points will be permitted in these estimations, lest they become a vehicle for downplaying or obfuscating the actual volumes and associated risks of TRU waste.

In sum, while the extended pre-application period might ostensibly seem to favor public participation, the inclusion of the TRU waste inventory estimation raises red flags. The potential for manipulated narratives, combined with the inherent risks of a dynamic TRU waste profile, demands a platform for open discussion and rigorous review. The up-and-coming public hearing is not only suitable for such discussions—it's paramount.

4. Topic: Safe Transport of TRU Mixed Waste (Part 1, Section 1.7.7.1; Part 2, Section 2.13).

Objection: Dilution of Oversight and Safety Mechanisms Pertaining to TRU Mixed Waste Transportation.

Safe and meticulous transportation of TRU mixed waste is an indispensable requirement to protect the environment and ensure the safety of the public. While the Permittees' track record regarding

transportation is commendable, it is not a justification for eliminating a more robust oversight mechanism or diluting the importance of the issue within the context of the WIPP facility permit.

In the First Draft Permit, Section 1.7.7.1 laid down clear conditions that emphasized the importance of the safe transportation of TRU mixed waste. It recognized the necessity of adhering to the WIPP Transportation Plan Implementation Guide and other regional guidelines. This, in turn, would have offered an additional layer of accountability and ensured that the Permittees' adherence to transportation safety norms was indeed unimpeachable.

Regrettably, the Second Draft Permit omits Section 1.7.7.1 entirely. The dilution of these conditions can be perceived as an unwarranted reduction in oversight and a potential compromise of public safety. The introduction of transport conditions in the First Draft Permit did not imply a disregard for the Permittees' achievements but reinforced the gravity of the issue. This is about continually emphasizing the safety-first approach, and explicitly stating the benchmarks of safety in the Permit fortifies that stance.

Conversely, the addition in Part 2, Section 2.13 of the Second Draft Permit seems to be a diluted response to the concerns of TRU mixed waste transportation. While the requirement for the Permittees to report non-compliances is laudable, this stipulation doesn't replace the more comprehensive guidance and requirements that Section 1.7.7.1 provided.

The Permittees' Technical Comment emphasizes their past record and points out redundancies. While it's undeniable that some of the mandates may be covered by other regulations, the Permit serves as an essential single point of reference for stakeholders. Stating the requirements, even if they're replicated elsewhere, reinforces the commitment to safety and aids in making the Permit a comprehensive document.

Moreover, the contention that the NMED has no regulatory authority over transportation, beyond manifesting requirements, seems misplaced. It is not about authority overlap but about affirming the overarching principle of ensuring safety at all stages of the WIPP facility's operation. The Permit is not just a legal document but a commitment to best practices, safety, and public accountability.

In conclusion, the removal of Section 1.7.7.1 from the Second Draft Permit and the limited addition in Section 2.13 raise critical concerns. Given the profound implications for public safety, these changes warrant an open discussion and in-depth scrutiny in a robust public hearing. The stakeholders deserve clarity on the reasoning behind these modifications and assurance that no compromises have been made concerning the safe transport of TRU mixed waste.

5. Topic: Public Participation and Community Relations Plan (Part 1, Section 1.15.2).

Objection: Reduction in Frequency of Public Engagements and Potential Erosion of Transparency and Trust.

Public participation is the bedrock of a robust and transparent decision-making process, particularly when matters of high public interest, like the operations of the WIPP facility, are concerned. It ensures that the voices of concerned citizens, stakeholders, and indigenous tribes are not just heard but

genuinely taken into account. A decline in the frequency of such engagements may inadvertently reduce the level of transparency and trust between the Permittees and the public.

In the First Draft Permit, Section 1.15.2 distinctly stressed the importance of regular, quarterly community engagements via the WIPP Community Forum and Open House public meetings. This commitment ensured that stakeholders, communities, and members of the public had consistent opportunities to engage, provide feedback, and voice concerns.

Regrettably, the Second Draft Permit proposes a reduction in these meetings from a quarterly schedule to only three times per year. While this may appear to be a minor change, it signifies a significant reduction in the number of occasions stakeholders have to directly engage with the Permittees. Such dilution could foster a perception of reduced transparency and diminished opportunity for oversight and feedback.

The Permittees' Technical Comment highlights the implementation of the ISO 14001, Environmental Management System, and the potential for virtual townhall meetings. While the move towards virtual engagements could indeed broaden participation, it doesn't negate the importance of the frequency of such engagements. Furthermore, the argument that quarterly meetings had 'insufficient new information' undermines the qualitative aspect of these meetings. It is not merely about sharing new information but about continuous engagement, building trust, and showing commitment to openness.

Additionally, the reference to past practices at the WIPP facility and the idea of insufficient new information to warrant quarterly meetings is concerning. The frequency of public meetings should not be solely determined by the quantity of 'new information' but should prioritize consistent public engagement, transparency, and the reinforcement of trust.

The notion that virtual townhalls are more accessible to a broader audience, while valid, should complement rather than replace in-person engagements. The personal interactions in community-based meetings hold irreplaceable value in terms of building rapport and understanding nuanced concerns.

The removal of "Open House" from the "WIPP Community Forum and Open House quarterly public meetings" in the Second Draft Permit is not merely a linguistic change but carries a deeper connotation. The term "Open House" evokes an environment that fosters an open, receptive, and friendly setting where community members can voice their concerns without fear of retribution. Its omission may unintentionally signal a shift away from this welcoming and inclusive ambiance, possibly dampening the community's willingness to share feedback and express concerns freely.

In conclusion, the reduction in the number of WIPP Community Forum public meetings as stipulated in the Second Draft Permit raises serious concerns about the intent and commitment to consistent public participation. Given the essence of maintaining trust and ensuring transparency in the WIPP facility's operations, these proposed changes necessitate an open debate and meticulous evaluation at the comprehensive public hearing. Stakeholders deserve a clear rationale for these changes and the assurance that the integrity of public participation remains intact.

6. Topic: Generator Site Technical Reviews (GSTRs) (Part 2, Section 2.3.2.2; Attachment C6, Section C6-4).

Objection: Ambiguity in the Oversight of Generator/Storage Sites and Potential Weakening of Accountability Mechanisms.

The systematic and periodic oversight of generator/storage sites via GSTRs is crucial for safeguarding environmental and public safety standards. GSTRs have traditionally played a pivotal role in ensuring that generator/storage sites adhere strictly to compliance measures, providing an essential framework for transparency and accountability.

In the First Draft Permit, both Attachment C6, Section C6-4 and Part 2, Section 2.3.2.2 outlined conditions that required GSTRs to be completed on a fixed biennial basis. This established cadence not only provided ongoing oversight of generator/storage sites but also imparted predictability for all stakeholders, assuring that robust checks and balances persist.

However, the Second Draft Permit introduces ambiguity, suggesting flexibility in the timing and frequency of GSTRs. This determination now seems to pivot more on the Permittees' internal Standard Operating Procedures rather than a clear, universally adhered-to timeline. Such a shift can potentially dilute the oversight mechanisms in place, ushering in unpredictability into the auditing process.

While the proposed verbiage in both sections does enumerate the factors that will influence the GSTR scheduling, the omission of a definitive timeline can lead to unintended delays in detecting and rectifying possible challenges. Furthermore, the discretionary power given to the Permittees for not just the timing but also the selection of sites for GSTRs might inadvertently introduce bias and reduce the previously established rigor of a set biennial review.

The inclusion by the NMED in the Table of Changes, particularly the amendment in Attachment C6 requiring the NMED's annual approval for the GSTR schedule, appears to be a step towards ensuring some form of oversight. While this inclusion implies a check on the Permittees' discretion, it falls short in detailing the criteria upon which the NMED would base its approval. Without clear benchmarks or guidelines, this change might simply shift the uncertainty from the Permittees to the NMED, rather than eliminate it.

The Permittees' Technical Comment raises the notion that GSTRs are beyond the RCRA/New Mexico Hazardous Waste Act’s (HWA) purview and are primarily a domain of the Department of Energy’s (DOE) self-regulated requirements. Yet, the GSTRs' inclusion in the Permit symbolizes a dedication to a higher degree of oversight, regardless of the jurisdictional nuances.

Even if DOE mandates cover GSTRs, the Permit acts as a consolidated reference for stakeholders, simplifying expectations and fostering accountability. Reinforcing these commitments in the Permit, even if they are mirrored elsewhere, serves to strengthen the resolve towards transparency and meticulous oversight.

In summary, the proposed adaptations in the Second Draft Permit concerning the GSTR mechanism are of considerable concern. While administrative flexibility has its merits, in contexts where safety and

compliance are paramount, ambiguity can be counterproductive. The introduction of the NMED's approval in the Second Draft Permit, though seemingly a safeguard, requires greater clarity on its implementation. All stakeholders deserve an unambiguous and steady oversight process. Given the implications for environmental protection and public safety, the suggested changes demand a thorough public hearing prior to issuance of the final permit to ensure that the revisions do not erode the foundational principles of rigorous oversight and the public's well-being.

7. Topic: Siting Another Repository (Part 2, Section 2.14.3).

Objection: Potential Deviation from Commitment to Geological Repositories and Diminished Transparency in Repository Siting.

The process of siting another repository for transuranic waste has wide-reaching implications not only for New Mexico but for any state that might become a future repository site. A transparent, comprehensive, and well-documented approach is paramount in building trust with stakeholders, communities, and the public at large.

The introduction of Section 2.14.3 in the First Draft Permit highlighted the necessity for the DOE to submit an annual report focusing on the progress toward siting another "geologic" repository. This section ensured that specific documentation was provided that would hold the DOE accountable for concrete steps taken toward achieving this objective.

However, the Second Draft Permit, while retaining the essence of an annual report, omits the term "geologic" and significantly expands on the documentation details. This could be seen as diluting the specific commitment to geologic repositories, opening the door to alternative, potentially less safe, repository types. Furthermore, the expanded list of potential documentation, though thorough, might inadvertently serve as a checklist for the DOE, leading to a scenario where quantity overshadows quality and substance.

As stated, the removal of the term "geologic" from the description of the repository is concerning. It subtly moves away from the commitment to geologic repositories, which have been the gold standard for such waste due to their perceived safety and long-term stability. By removing this specification, it raises questions about the direction and the potential for considering alternative repository types, which might not have the same level of scrutiny and public acceptance.

The Permittees' Technical Comment emphasized a perceived lack of a foundation in RCRA or the HWA for such a report. While this argument raises a valid concern about regulatory requirements, it bypasses the broader significance of public transparency and accountability. Their proposal to provide an annual update voluntarily to New Mexico officials, outside of the Permit, fails to recognize the vital importance of formalizing this commitment within a legal framework. A non-binding, voluntary update lacks the enforcement and oversight mechanisms inherent in the permit.

In conclusion, the alterations made to Section 2.14.3 in the Second Draft Permit raise significant concerns about the intent, clarity, and commitment of the DOE in their pursuit of siting another repository for transuranic waste. The nature of these changes demands a comprehensive discussion at the upcoming public hearing where stakeholders can seek clarity on the motivations behind these

amendments. Transparent dialogue is essential to ensure that the long-term safety and best interests of all stakeholders remain at the forefront of the decision-making process.

8. Topic: Future Panels Must Be Requested in Renewal Application (Part 4, Section 4.1.1.2.iii).

Objection: Concerns Regarding Integration of Future Panel Requests Within Renewal Applications.

The proposed transition from addressing future panel inclusions via Permit Modification Requests to consolidating them within Renewal Applications introduces several points of contention. Notably, the nature of these two mechanisms — their depth, focus, and clarity — inherently differ.

Historically, Permit Modification Requests have provided a concise platform where specific proposed alterations are dissected and reviewed. Such a tailored approach ensures that the public and stakeholders can closely evaluate, understand, and offer insights into the specific implications and nuances of the proposed changes. This becomes even more vital when deliberating on issues as significant as the establishment of additional waste panels, which are fraught with environmental, logistical, and safety intricacies.

Conversely, Renewal Applications, given their comprehensive nature, encapsulate a plethora of issues and operational facets of the facility. This expansive scope, while thorough, raises a potential challenge: pivotal matters, such as the inauguration of new panels, could inadvertently be lost or overshadowed amidst the multitude of concurrent concerns. Such a shift could task the public and stakeholders with the daunting responsibility of navigating through extensive documentation to unearth and critically assess proposed panel expansions.

Furthermore, the inherent differences in the regularity of these processes mean that the timeline for proposing new panels might not align with emerging operational necessities, thus potentially delaying crucial decisions.

Given these complexities, it's imperative to ensure that decisions as significant as the introduction of new panels undergo the most stringent evaluation. While the Renewal Application process does encompass a public review facet, the broader context in which this review is now set to occur could reshape the nature and depth of the discourse around panel additions.

In light of these considerations and to guarantee that the evaluation of future panel requests remains robust, transparent, and without dilution, it is essential to dedicate focused time and discussion on this shift in process during the public hearing. Therefore, this topic necessitates a dedicated space in the upcoming public hearing to ensure that the concerns, implications, and challenges of integrating panel requests within Renewal Applications are adequately addressed and understood by all stakeholders involved.

9. Topic: Prioritization and Risk Reduction of New Mexico Waste (Part 4, Section 4.2.1.4).

Objection: Examination of Prioritization and Risk Reduction Procedures for New Mexico Waste.

The evolution of the language surrounding the prioritization and risk reduction of New Mexico waste, from its absence in the current permit to its introduction in the First Draft Permit and subsequent modifications in the Second Draft Permit, has been significant. The scope and depth of these changes necessitate a rigorous examination of their potential implications on public safety, environmental protection, and transparency in waste management operations.

The current permit does not specifically address the prioritization of waste from the Los Alamos National Laboratory (LANL), leaving a notable gap in waste management specificity. The First Draft Permit aimed to address this by necessitating a certification of sufficient disposal capacity for waste originating from New Mexico generator/storage sites, with an emphasis on the LANL waste. Additionally, it sought to ensure that the volume of stored waste from the LANL surpassed that from other generator sites. However, this stipulation appears to have been softened in the Second Draft Permit, with less stringent directives.

The Permittees' objection to this clause, citing the larger volumes of stored waste at other sites such as Idaho National Laboratory and Hanford, does hold operational merit. Yet, their argument omits the unique risks and considerations associated with the LANL waste, given its locality and the direct implications for New Mexico's environment and its residents. The reduction of the specific mandate in the Second Draft Permit to prioritize the LANL waste has significant ramifications, potentially allowing waste streams with larger volumes to take precedence over local concerns.

Moreover, the ambiguity in the phrasing "sufficient TRU Mixed Waste Volume capacity" in the Second Draft Permit raises concerns about transparency and clarity. While the Permittees are mandated to certify the capacity to handle the New Mexico generator/storage site waste, the public might not have a clear understanding of what constitutes "sufficient capacity." Without transparent underlying calculations and an explicit definition of sufficiency, there remains room for interpretation, potentially allowing operational conveniences to overshadow safety and environmental considerations.

Furthermore, the Permittees’ emphasis on the remaining capacity of the WIPP facility and the relatively small volume of the LANL waste, compared to the total allowable volume, belies the underlying issue: the nature, hazard potential, and impact of the waste. It is not just the volume that matters but the intrinsic characteristics, risks, and the consequent prioritization of the waste streams, considering the locality and the directly affected stakeholders.

In light of the considerable shifts in language and the ambiguities present, it becomes essential to understand and scrutinize the decisions leading up to these modifications. The public deserves an understanding of how decisions were made and the priorities considered. The safety and well-being of New Mexico's residents, the environmental integrity of its lands, and the transparency in operations at the WIPP facility are paramount.

Consequently, the inclusion, modifications, and implications of the section "4.2.1.4 Prioritization and Risk Reduction of New Mexico Waste" must be thoroughly discussed in the forthcoming public

hearing. It is essential to ensure that the revised language truly captures the best interests of the public, the environment, and upholds the highest standards of safety and transparency.

10. Topic: Legacy TRU Waste Disposal Plan (Part 4, Section 4.2.1.5).

Objection: Ambiguities Surrounding the Definition and Implementation of Legacy TRU Waste Disposal Plan.

The inclusion of the "Legacy TRU Waste Disposal Plan" in the Second Draft Permit under Section 4.2.1.5 introduces a novel approach to managing legacy TRU and TRU mixed waste. While the provision does advocate for consultation with generator/storage sites and stakeholders, several ambiguities and concerns arise from the presented language.

Historically, the existing sections under "4.2 PERMITTED AND PROHIBITED WASTE IDENTIFICATION" have provided specific criteria and conditions regarding waste acceptance and disposal, ensuring clarity, compliance, and a definitive operational direction. These criteria, enumerated in Section 4.2.1, set concrete conditions like the need for a Waste Analysis Plan and adherence to Treatment, Storage, and Disposal Facility Waste Acceptance Criteria (TSDF-WAC).

Conversely, the newly introduced Section 4.2.1.5 is ambiguous in its directives. The clause necessitates the Permittees to "define legacy TRU and TRU mixed waste," yet does not provide any preliminary guidelines or parameters for this definition. The lack of clear criteria could lead to broad interpretations, with the potential for legacy TRU definitions to be adjusted to favor operational or logistical convenience, rather than safety and environmental concerns.

Furthermore, the timeline provided for the development and submission of the Legacy TRU Waste Disposal Plan, although seemingly adequate at face value, can become problematic. A one-year window to develop, submit, and then seek public input, combined with the imperative to initiate consultation within 90 days, can lead to rushed processes. This expedited timeline might not provide adequate room for comprehensive stakeholder engagement, potentially compromising the depth and breadth of feedback.

Lastly, the provision that "Panel 12 will be reserved for the disposal of legacy TRU mixed waste" contingent on its practicality as articulated in the final Plan seems to pre-emptively designate a disposal location without clear information on the waste's nature, volume, and potential hazards. Such a preemptive stance can lead to misalignment between the actual needs of waste disposal and the capacity or suitability of Panel 12.

Given these potential ambiguities and the pivotal nature of the Legacy TRU Waste Disposal Plan, it is of utmost importance that the nuances, interpretations, and implications of this new provision are thoroughly examined. Thus, the Legacy TRU Waste Disposal Plan and its associated processes, timelines, and impacts require an in-depth discussion during the public hearing. This will ensure that all stakeholders have a comprehensive understanding and an opportunity to address potential shortcomings and concerns.

11. Topic: Laboratory Performance Evaluation Plan and VOC Monitoring (Part 4, Section 4.6.2.1; Attachment N, Section N-5e).

Objection: Deletion of the Laboratory Performance Evaluation Plan (LPEP) and Its Implications for Repository VOC Monitoring.

The progression of the language regarding the Laboratory Performance Evaluation Plan (LPEP) in conjunction with the Repository VOC (Volatile Organic Compound) Monitoring Program (RVMP), from its detailed description in the current permit to its deletion in the Second Draft, is concerning. The depth and nature of these changes warrant an in-depth analysis of their potential ramifications on ensuring quality and reliable VOC monitoring within the repository.

The current permit specifically outlines the RVMP LPEP, providing details on its requirements, sections, and alternative proficiency testing. This detailed approach signifies the permit's commitment to maintaining high standards of monitoring VOCs, ensuring the protection of both the environment and public health. However, the First Draft Permit, while acknowledging the Permittees' move towards proficiency testing, retained the language on LPEP. This retention is concerning given the shift in the Second Draft, which omits the LPEP in its entirety, replacing it with a mere acknowledgment of the Permittees' proficiency testing plan.

The Permittees' rationale for requesting the deletion of the LPEP, citing it as obsolete due to addressing concerns over VOC monitoring sensitivity, does have technical merit. However, their standpoint appears to downplay the necessity and significance of a structured and detailed LPEP. The proficiency testing plan's mere implementation, without an accompanying detailed LPEP, might risk compromising the quality and reliability of VOC monitoring within the repository.

Moreover, the public deserves clarity on the robustness and efficacy of the proficiency testing plan that the Permittees have implemented. The omission of a detailed LPEP potentially diminishes transparency, leaving stakeholders without a clear understanding of the standards and practices in place to ensure VOC monitoring's accuracy and reliability.

Given these significant modifications and the potential implications for repository VOC monitoring, a deeper understanding and scrutiny of the reasons behind these changes are imperative. It is crucial to ensure that the modifications truly reflect best practices, uphold rigorous monitoring standards, and ensure both environmental and public safety.

As such, the decisions leading to the changes in language surrounding the LPEP and its relationship with the RVMP be extensively discussed in the upcoming public hearing. Such a discussion is vital to confirm that the revised language genuinely prioritizes the safety of the environment, the public, and maintains the highest standards of accuracy and transparency in VOC monitoring.

12. Topic: Changes and Clarifications to Closure Procedures and Timelines in the WIPP Facility Permit (Part 6, Section 6.5.2; Attachment G, Introduction; Attachment G, Section G-1d; Attachment H1, Introduction).

Objection: Ambiguities and Potential Loopholes in Proposed Closure Procedures and Timelines.

The evolution of the proposed modifications in the Second Draft Permit regarding the closure procedures and timelines of the WIPP facility is of significant concern. Currently, the Second Draft Permit introduces a series of changes and clarifications that seem deeply rooted in the Permittees' Technical Comments, hinting at a potential shift towards increased operational and closure flexibility for the facility. While the Permittees offer justifications for these adjustments, there remain unanswered questions about the potential environmental, safety, and procedural implications of these revisions.

One pressing area of concern is the ambiguous timeline for closure. The introduction of conditions such as "unless a timely Renewal Application has been submitted" creates a landscape where timelines for closure can be stretched indefinitely, potentially compromising the safety and environmental health of the site. Additionally, the emphasis on the WIPP facility achieving its maximum capacity before commencing the final closure could lead to scenarios where closure is initiated prematurely, particularly if some hazardous waste disposal units (HWDUs) haven't reached their capacity, which can pose challenges for effective waste management.

While the Permittees seek to eliminate certain redundancies to avoid conflicts, some of these redundancies might act as vital clarifications. Their removal can pave the way for more ambiguities and enforcement challenges. The Permittees' callout of incongruities in the First Draft Permit also suggests that the proposed modifications might bring forth their own set of challenges when it comes to interpretation and enforcement. A notable concern that emerges from the Permittees' Technical Comments is the repeated challenge to NMED's regulatory authority, indicating an underlying friction between the desire for operational flexibility and the necessity of robust regulatory oversight.

Given these multifaceted challenges and potential pitfalls, a comprehensive dialogue is imperative. Stakeholders must gain a deep understanding of these proposed changes and their long-term repercussions. Ensuring that these modifications meet the highest standards of safety, environmental stewardship, and regulatory compliance is paramount. Therefore, it is crucial that the rationale and potential consequences of changes concerning closure procedures and timelines be rigorously dissected in the upcoming public hearing.

13. Topic: Panel Closure and Reporting Transparency in the WIPP Facility Permit (Part 6, Section 6.10.1).

Objection: Inadequate Assurance of Transparency and Public Access to Panel Closure Reports.

The progression of the permit language regarding Panel Closure, as observed from the current permit to the Second Draft Permit, raises valid concerns about the transparency and accessibility of critical closure information. While the addition of placing a panel's Closure Report on the DOE WIPP Home Page in the Second Draft Permit represents a nod to increased transparency, the broader context of the WIPP facility's operation necessitates a rigorous evaluation of this change.

In the current permit, there's a clear focus on notifying the Secretary of the final TRU mixed waste volume and the stipulation to post a link to this notification on the WIPP Home Page. However, the First Draft expanded this by mentioning the submission of a Closure Report to the Secretary, without mandating its public accessibility. The Second Draft Permit does attempt to bridge this gap by requiring the Closure Report to be accessible via the WIPP Home Page. However, given the history of concerns surrounding the environmental and public health impacts of the WIPP facility's operations, simply adding a link might be seen as insufficient.

Providing public access to the Closure Report is a commendable step, but the nuanced importance of these reports suggests that more proactive measures are necessary. Panel Closure Reports are pivotal in understanding the environmental and safety precautions taken during the closure of each Underground HWDU. Therefore, the mere addition of a link may not ensure that the broader public is aware of, or even understands, the intricacies and implications of these reports. Moreover, without a clear framework for ensuring the timely update of these reports and without mechanisms for public feedback or queries, the transparency measure may remain just a superficial addition.

Considering the critical nature of panel closures and the potential environmental ramifications, it is essential for the public to not only have access to these reports but also be actively informed of their availability and be encouraged to engage in their review. Transparency shouldn’t just be reactive but proactive, especially in scenarios involving potential environmental hazards.

Thus, while the Second Draft Permit does inch towards better transparency with the inclusion of the Closure Report on the WIPP Home Page, there's room for enhancing proactive public engagement and awareness. Stakeholders need a more encompassing understanding of these Panel Closure Reports, and a deeper discourse on this matter is imperative during the approaching public hearing. It is essential to ensure that such transparency measures genuinely prioritize the safety of the environment, the public, and foster an atmosphere of trust and engagement between the WIPP facility and the community it impacts.

14. Topic: Flexibility in Choice of Barrier Materials for Waste Storage Areas at the WIPP Facility (Attachment A1, Sections A1-1c(1) and A1-1c(2)).

Objection: Potential Compromise to Safety and Environmental Integrity Due to Undefined Barrier Standards.

The proposed amendment in the Second Draft Permit suggests flexibility in the choice of barrier materials to protect critical waste storage areas in the WHB Unit and PAU at the WIPP facility. Specifically, the change from specifying "concrete barriers" to the general term "barriers" seems to stem from the desire for operational flexibility, as indicated in the Permittees' Technical Comments. While understanding the need for flexibility and potential advancements in barrier technology, it's essential to maintain a balance between operational agility and the uncompromised safety of the environment, site workers, and surrounding communities.

The proposed change eliminates the explicit requirement for using concrete—a material known for its durability and protective qualities—and opens the door for alternative barrier choices, some of which

might not possess the same protective features as concrete. This alteration could inadvertently lead to suboptimal or less resilient barrier choices under the guise of operational flexibility. Given that these barriers are meant to offer protection from equipment and potential hazards in the Waste Handling Building (WHB) Container Storage Unit (WHB Unit) and Parking Area Container Storage Unit (PAU), even a slight compromise in barrier integrity can lead to significant repercussions, ranging from equipment damage to potential containment breaches.

The vagueness of the term "barriers" without providing an accompanying definition or setting minimum performance standards for alternative barriers poses a risk. Without specific guidelines or criteria, there's a lack of clarity regarding what constitutes an adequate barrier, leaving room for interpretation and potential regulatory challenges in the future.

The justification provided in the Permittees' Technical Comment mentions possibilities like water or sand-filled plastic barriers, steel pillars, or administrative/procedural barriers. While these alternatives might be valid in some scenarios, it's essential to evaluate their long-term durability, resilience to environmental conditions, and protective capacity compared to concrete barriers. Merely allowing flexibility without stringent criteria might lead to cost-cutting measures that potentially prioritize operational savings over environmental safety.

In conclusion, while operational flexibility is essential for adapting to technological advancements and optimizing processes, it should not come at the cost of potential safety and environmental hazards. The shift from specifying "concrete barriers" to the ambiguous term "barriers" without a clear definition or criteria might inadvertently compromise the WIPP facility's integrity. The public, especially those living in proximity to the WIPP facility site, deserves a thorough discussion on this change during the public hearing to ensure that the safety and environmental precautions remain paramount in any operational modifications.

15. Topic: Root Cause Analysis (Attachment A1, Section A1-1d(2)).

Objection: Inappropriate Diminishment of Root Cause Analysis Requirements and Its Implications for Public Safety.

The evolution of the requirements surrounding root cause analysis in the event of contamination in a contact-handled (CH) package or a compromised shipping container, from its detailed mandate in the First Draft Permit to its more generalized reporting framework in the Second Draft Permit, presents significant concerns. The nuances and implications of these changes necessitate a comprehensive analysis to understand their potential ramifications on ensuring robust responses to contamination incidents and preserving public safety.

The First Draft Permit explicitly called for a detailed root cause analysis whenever contamination was discovered or if the integrity of a shipping container was compromised. Such an analysis serves as a systematic tool for identifying primary causes of faults, ensuring that preventive measures are accurately implemented to thwart recurrence. The Second Draft Permit, however, leans on the requirements of DOE Order 232.2A, mandating a report in the event of certain incidents rather than an in-depth root cause analysis. This transition might not capture the depth and rigor that a dedicated root cause analysis offers.

While the Permittees have presented technical reasoning for leaning on DOE Order 232.2A, emphasizing its alignment with internal DOE notification requirements, this rationale appears to overlook the intrinsic value of a structured and comprehensive root cause analysis. Simply relying on a report, without the depth of a root cause analysis, could lead to potential oversights in understanding the severity and implications of specific incidents. This shift could, consequently, impact the robustness of corrective measures, compromising the safety of the public and the environment.

There's a palpable need for transparency. Stakeholders deserve to fully understand the criteria under which incidents are reported and analyzed. Transitioning from an explicit root cause analysis requirement to a more generalized reporting framework could diminish this transparency, leaving the public with potential gaps in understanding the thoroughness of investigations following incidents.

Given the critical nature of these changes and their potential implications for ensuring a detailed response to contamination incidents and maintaining public safety, it's paramount to delve deeper into the underlying motivations for these amendments. It's essential to guarantee that the adjusted requirements truly align with the highest standards of safety, accountability, and transparency.

Considering these factors, the decision-making process leading to the changes in requirements surrounding root cause analysis must be thoroughly discussed in the forthcoming public hearing. Such dialogue is crucial to ensure that any amendments genuinely prioritize public safety, environment protection, and uphold the highest standards of incident investigation.

16. Topic: Monitoring of Oil and Gas Activities Near the WIPP Facility (Attachment A2, Section A2-5b(2)(a)).

Objection: Diminished Monitoring Stringency in Oil and Gas Activities Proximity to WIPP.

The transition in the verbiage from the First Draft Permit to the Second Draft Permit concerning the surveillance of oil and gas production and saltwater disposal wells near the WIPP facility raises significant concerns. The revisions may compromise the safety, security, and public trust in the WIPP facility’s operations. In the First Draft Permit, Permittees are unequivocally mandated to provide "a summary of the results of the monthly surveillance of oil and gas production and salt water disposal wells within a one-mile perimeter outside the Land Withdrawal Act boundary." This stipulation underlines the commitment to active, ongoing oversight of external activities that might affect the WIPP facility’s structural integrity.

However, the Second Draft Permit subtly shifts this responsibility, suggesting that Permittees need only report an annual list based on data from the New Mexico Oil Conservation Division (OCD) regarding active wells. This revision, while appearing innocuous, is fraught with potential pitfalls. Relying solely on annual data might result in overlooking emerging threats, thereby delaying crucial corrective measures. Additionally, an annual list, when compared to a monthly summary, lacks the nuanced depth and insights necessary to understand and preempt potential challenges to the WIPP facility’s safety. Furthermore, the exclusive reliance on OCD data, despite its reputation, places an undue risk by sidelining the Permittees' duty to independently validate and assess this information in light of the WIPP facility’s unique operational context.

The Permittees' argument, emphasizing the reliability and public accessibility of OCD data, doesn't diminish the necessity of having a WIPP-centric, continuous monitoring mechanism. The disparities between the two drafts and their implications for the WIPP facility's safety, the environment, and public trust necessitate a thorough review. Ensuring that any modifications are made with the best interests of environmental safety, public health, and the rigorous standards that the WIPP facility operations necessitate is paramount.

Given these nuances, it's imperative that the changes regarding the surveillance parameters for oil and gas activities in proximity to the WIPP facility be rigorously debated in the future public hearing. This approach will ensure that final decisions reflect best practices, uphold stringent surveillance standards, and reassure stakeholders about the facility's safe and transparent operation.

17. Topic: Proposed Permit Language Modification on Suspension of Waste Shipments to the WIPP Facility (Attachment C, Section C-1d).

Objection: Alterations to NMED's Authority and the Implications for Health and Environmental Protections.

In the current permit, NMED clearly defined its authority regarding the conditions under which the suspension of shipments and emplacement of TRU mixed wastes at the WIPP facility could take place. The trajectory of language modifications, particularly the significant alterations proposed by the Permittees in their response, has raised pressing concerns. The essence and magnitude of these changes demand a meticulous examination of their potential consequences on safeguarding the community and the state of New Mexico's environment and public health.

In the First Permit Draft, several conditions were elucidated, ranging from Permittees not fulfilling the permit's requirements to direct violations or any potential allegations of noncompliance. This comprehensive approach depicted the NMED's dedication to overseeing and maintaining stringent checks on the facility's operations. However, the Permittees' subsequent proposal takes a dramatic pivot, focusing predominantly on the need for "clear and convincing evidence of imminent and substantial endangerment to human health or the environment."

The Permittees' stance on eliminating "allegations" as a trigger for action, and their narrowed interpretation of the HWA to delineate the NMED's authority, poses serious questions. While they emphasize the importance of due process and rights, their perspective appears to prioritize operational freedom, potentially jeopardizing safety and transparency.

By suggesting that certain aspects of the original language supersede state authority, the Permittees indirectly challenge the efficacy and jurisdiction of state regulatory frameworks. This is alarming, especially when these state guidelines might be instrumental in addressing nuances that federal directives might overlook.

Given the profound nature of these modifications, it is paramount to delve deeper into understanding the implications of these shifts. We must ascertain that these changes genuinely resonate with best

practices, preserve the stringent standards essential for the environment and public health, and provide utmost clarity and transparency for all stakeholders.

Hence, the rationale and consequences behind the alterations concerning the NMED's authority and the conditions for suspending waste shipments to the WIPP facility must be thoroughly addressed in the requested public hearing. This discourse is indispensable to ensure that the evolving language unequivocally centers on the welfare of the community, environment, and upholds the principles of clarity, transparency, and safety.

18. Topic: The WIPP Facility Records (Attachment E, Section E-1).

Objection: Concerns Surrounding the Restoration of "WIPP Records" Language and Implications for Transparency and Oversight.

The recent decision in the Second Draft Permit to reinstate the language associated with WIPP Records, having previously been removed from the First Draft Permit, introduces a series of uncertainties and reservations. While, on its face, the restoration of historical permit language could be viewed as a positive measure, the initial omission itself casts a shadow over the decision-making process and the criteria that guided these shifts.

The protocols regarding the handling, inspection, and maintenance of equipment and facilities at the WIPP facility are of utmost significance. Any modification to documentation procedures and record-keeping holds the potential to profoundly impact the safety, transparency, and integrity of the WIPP facility's operations. Thus, the pendulum swing from deletion in the First Draft Permit to restoration in the Second Draft Permit is inherently unsettling.

First, there's an immediate need to elucidate the reasoning behind the initial decision to remove this language from the First Draft Permit. What factors or considerations led to this decision, and why was it deemed appropriate?

Following this, the decision to reintroduce this language in the Second Draft Permit either signifies an altered evaluation criterion or a reaction to unforeseen concerns that surfaced after the First Draft Permit's release. This flip-flopping raises genuine concerns about the transparency and consistency of the revision process. Stakeholders may be left wondering about the fluidity in such pivotal decisions, potentially eroding their confidence in the revision and oversight mechanisms.

Furthermore, despite the reintroduction of the language detailing the WIPP facility record-keeping, lingering doubts persist about the steadfastness of the oversight mechanisms in place. The initial decision to exclude such pivotal information naturally prompts skepticism regarding the facility's unwavering commitment to rigorous inspections and uncompromising documentation.

Ambiguities persist surrounding the "WIPP Records", especially in the context of storage protocols, data security, and potential vulnerabilities to data manipulation. The Second Draft Permit's provisions, which permit records older than three years to either remain at the WIPP facility or be relocated to the WIPP Records Archive, without offering substantive details on storage conditions or security protocols, poses risks and warrants closer scrutiny.

Lastly, the noticeable absence of comments from the Permittees on these fluctuations between drafts is a matter of concern. This absence raises critical questions: Were the permittees privy to, or involved in, the decision-making process behind these shifts? If not, why was their feedback or perspective overlooked in a matter of such magnitude?

Considering the broad implications of these alterations on safety, transparency, and stakeholder trust, a comprehensive review of the "WIPP Records" language's evolution across the drafts is essential.

Hence, a detailed exploration of the "WIPP Records" topic is necessary in the imminent public hearing. Such a dialogue is indispensable to discern the underlying motivations behind these draft transitions, guaranteeing that the finalized language genuinely embodies the values of environmental safety, public well-being, and upholds the gold standard of transparency and meticulousness in facility documentation and procedures.

19. Topic: Decontamination at Closure (Attachment G, Sections G-1a(1) and G-1e(2)(c)).

Objection: Implications of Added Language Recognizing Potential Decontamination Needs Due to February 2014 Releases.

The revision made in the Second Draft Permit, recognizing the potential need for decontamination due to the incidents in February 2014, represents more than a mere acknowledgment. This new language indicates a fundamental shift in the WIPP facility’s operational approach, bearing implications that might have been under-represented in the current permit.

Previously, the First Draft Permit hinted at possible scenarios where decontamination techniques could be employed, but the current language in the Second Draft Permit directly associates this requirement with the February 2014 releases. This sharp transition between the two drafts indicates a possible understatement of the risks and consequences related to the 2014 incident in earlier versions. Such an observation warrants greater transparency and a more exhaustive exploration of the actual impacts and necessary interventions.

Additionally, the operational philosophy of the WIPP Project, "Start Clean – Stay Clean," is now juxtaposed with this new acknowledgment. This introduces uncertainties about the original philosophy's efficacy and possible breaches in its implementation. The wording, suggesting that decontamination "may" be required due to the 2014 releases, further amplifies these uncertainties, raising questions about the WIPP facility's state of readiness and its commitment to safety and environmental protocols.

Furthermore, while the draft emphasizes the possible need for decontamination, it overlooks the ramifications of this on the WIPP facility's contingency closure plans and how such plans might be affected by unforeseen incidents similar to what transpired in 2014. Concerns also arise regarding potential long-term environmental risks associated with the need for decontamination, a discussion that appears missing from the current permit.

Lastly, despite the emphasis on managing and controlling radiological and hazardous waste, the impact of the 2014 releases on these procedures and the necessary modifications, if any, are inadequately elaborated upon in the Second Draft Permit.

Given these substantial considerations and potential challenges tied to the 2014 releases, an in-depth and transparent dialogue is crucial. The NMED must thoroughly address all foreseeable impacts, strategies, and modifications to assure safety, environmental sanctity, and community confidence before advancing further. This comprehensive discussion is paramount during the public hearing to ensure that all stakeholders are well-informed and reassured of the project's integrity and commitment.

VI. ISSUE RAISED: OBJECTIONS TO EDITORIAL-DRIVEN CHANGES IN DRAFT PERMIT.

1. Topic: Internal Communications Systems in the Facility (Part 2, Section 2.10.1.1).

Objection: Ambiguity and Potential Compromises in Communication Infrastructure Due to Change in Terminology.

The modification of the language from "plant-based radios" in the First Draft Permit to "facility radio base stations" in the Second Draft Permit, specific to the internal communication systems, sparks concerns surrounding the clarity, applicability, and potential safety implications of these proposed adjustments.

In the current permit, the phrase "plant-based radios" evokes a clear imagery: communication devices specifically designed for, and situated within, specific plant sectors. This detailed classification not only indicates the geographical bounds of these radios but also hints at the tailored functionalities they might possess, suited to the unique demands and emergencies of that particular plant.

Such specification aids in ensuring that emergencies can be managed with a high level of localized precision and rapid response, based on the plant's particular layout and potential hazards.

In stark contrast, the introduction of the term "facility radio base stations" in the Second Draft Permit expands the scope beyond the confines of a singular plant. The term seems to encompass a broader range of potential locations and functionalities within the entire facility.

This wider lens, while potentially offering more extensive coverage, can also introduce ambiguities. Specifically, without further elaboration, there's a looming risk of misunderstandings or misinterpretations regarding which base stations are responsible for specific areas, and how they would be most effectively utilized during emergency scenarios.

Moreover, the altered terminology could hint at a potential shift in the operational strategy. This presents questions such as: Is the intent to establish a centralized communication system? Or, alternatively, is the plan to have multiple base stations dispersed throughout the facility? Insights into such details are pivotal, as they significantly influence the effectiveness of emergency communications.

Furthermore, the essence of communication in emergencies is efficiency and immediacy. If the term "facility radio base stations" indicates a transition from a localized system to a broader one, it brings

forth issues related to signal strengths, system redundancies, possible communication dead zones, and the overall pace of communication during crises.

Another facet of concern is the transparency in changes regarding the communication infrastructure. Even if the adjustment is limited to terminology, such modifications need to be lucidly communicated to all stakeholders. They must be afforded an opportunity to comprehend the motives behind these changes and the potential ramifications.

Taking into account the possible implications on safety, operations, and transparency, an intensive examination of the rationale behind these linguistic alterations is paramount. It's imperative to validate that the changes genuinely adhere to best practices, fostering both worker and environmental safety. Consequently, the decisions resulting in the linguistic revisions surrounding internal communication systems must be thoroughly dissected in the pending public hearing. Such a discourse is essential to affirm that the updated terminology sincerely champions safety, efficiency, and upholds the zenith of clarity and transparency in facility communication.

2. Topic: Scope and Clarity of Post-Closure Care in Underground HWDUs (Part 7, Section 7.2).

Objection: Evolution of Panel and Drift Terminology and the Implications on Comprehensive Post-Closure Care.

The current language in the Permit, which specifically mentions "eight panels and two access drifts," conveyed a clear scope of the post-closure care commitment. The explicit mention of the number of panels and drifts offered a definitive understanding of the areas and the extent of care warranted.

In the First Draft Permit, however, the specific count was omitted, transitioning the language to a more generalized "panels and access drifts." This generality, while providing flexibility, introduces ambiguity regarding the precise number of units that fall under the post-closure care umbrella.

Now, the Second Draft Permit further refines this language to "panels and panel access drifts." While this introduces a specific classification of drifts, it does so without clarity on the total number of panels and drifts, unlike the current permit. Consequently, there is an underlined uncertainty regarding whether the facility has undergone expansions or changes in the number or types access drifts since the current permit's issuance. If such changes have occurred, the Second Draft Permit fails to capture them explicitly, leading to potential discrepancies in post-closure care responsibilities.

The evolving language, from a concrete number to a generalized term, and finally, to a specific type without a specified number, is disconcerting. Such modifications in terminology could lead to potential misunderstandings or oversights in post-closure care, especially if the facility has witnessed expansions or changes in its underground units.

Stakeholders deserve clarity and transparency. Any shift in language, even if it seems nuanced, can have ramifications on the holistic post-closure care of the WIPP facility, which is paramount for long-term environmental safety.

Considering the potential implications of these changes in the Second Draft Permit, the decision to modify the language around post-closure care for the underground units must be presented for rigorous examination during a public hearing. This discussion is crucial to ensure that all modifications in the permit language prioritize the WIPP facility's comprehensive post-closure care, thereby safeguarding the environment.

3. Topic: Refinement in Ventilation Modes of Operation Description (Attachment A2, Section A2-2a(3)).

Objection: Ambiguity in the Classification of Ventilation Modes and Potential Implications for Operational Safety.

The distinction between the First Draft Permit and the Second Draft Permit in relation to the "Underground Ventilation Modes of Operation" lies in the omission of a single comma. On its face, this change could be dismissed as a trivial editorial amendment. Nevertheless, a closer examination of its implications reveals a significant effect on the clarity of the presented guidelines.

In the First Draft Permit, the inclusion of the comma clearly delineated the modes, especially accentuating the scenarios in which the high-efficiency particulate absorbing (HEPA) filtration system would be activated, notably "if radioactive contaminants are detected or suspected." This comma served as a clarifying pause, ensuring that readers could distinctly understand under what circumstances the filtration system would be in operation.

Upon the comma's removal in the Second Draft Permit, an unintended ambiguity creeps into the ventilation modes' interpretation. The revised phrasing can suggest that the HEPA filtration system is in constant operation and shifts to a different mode when contaminants are detected. Such ambiguity can lead to potential misunderstandings about when and why the HEPA filtration system activates, which is crucial for maintaining a safe operational environment.

The core purpose of this filtration system is to guard against airborne radioactive contaminants. As such, it's imperative that its operational guidelines remain lucid and unequivocal to sustain stringent safety standards. Seemingly minor linguistic or punctuation changes, if they muddy understanding, can translate into significant real-world implications when dealing with systems that ensure safety.

Additionally, it's worth noting that the original sentence with the comma does not appear to be a fragmented sentence, challenging the Permittees' rationale for the "editorial" change in the Table of Changes. Given the critical nature of the HEPA filtration system in safeguarding the WIPP facility's environment, and by extension the wider environment and public health, the exact nature of its operational modes and triggering scenarios must be indisputable.

Consequently, an in-depth review and discussion concerning the alterations in the language describing the "Underground Ventilation Modes of Operation" must be scheduled during the anticipated public hearing. This discussion is vital to confirm that the safety protocols detailed in the permit are transparent, unambiguous, and effectively implementable, thus securing both environmental and public health.

4. Topic: Addition of Panels 11 and 12 to the Geologic Repository Process Description (Attachment A2, Section A2-2b).

Objection: Incomplete Integration of Panels 11 and 12.

The inclusion of Panels 11 and 12 in the Geologic Repository Process (Section A2-2b) of the Second Draft Permit lacks thorough integration and context. The oversight of their omission in the first place is a concern. This scenario highlights potential gaps in the review process and raises concerns about clarity, as well as the potential for operational oversights.

Stakeholder engagement and transparency are paramount in permit processes. Introducing Panels 11 and 12 without adequate context may lead to misconceptions, impacting trust in the transparency of the permit process and the diligence of the repository's operation. Therefore, it's vital that the integration of Panels 11 and 12 into Section A2-2b undergoes a thorough reevaluation. Their inclusion shouldn't solely rest on editorial feedback but should be subjected to a rigorous review. Ensuring this will align the permit with best practices and maintain the standards set in the First Draft Permit. As such, it's imperative that this topic becomes a central point of discussion in the foreseen public hearing, guaranteeing that its implementation genuinely protects the environment, maintains public safety, and offers clarity to all involved parties."

5. Topic: Evolution in Language Emphasizing "Original" Data's Legibility in Data Generation Level (Attachment C3, Section C3-4a).

Objection: Shift in Focus and Potential Ambiguity from Emphasizing "Original" Data Readability.

The successive modifications to the permit language, culminating in the Second Draft Permit's focus on the legibility of "original" data, uncovers layers of interpretative challenges. At a superficial level, the inclusion and emphasis on "original" data appears to be a modest linguistic refinement. However, when studied in depth, it prompts inquiries into whether the Permittees aim to uniformly ensure readability for all data types or are narrowing the focus specifically to "original" data. Such a tilt can have broad implications for data recording and interpretation standards.

The First Draft Permit presented a comprehensive view of data handling and changes. It mandated that "Changes to original data must be lined out, initialed, and dated by the individual making the change. A justification for changing the original data may also be included. Original data must not be obliterated or otherwise disfigured; data must be readable. Data changes shall only be made by the individual who originally collected the data or an individual authorized to change the data." This approach didn't merely stress the importance of the original data's readability but also set forth procedures for modifying the data and maintaining its integrity throughout.

Comparatively, the Second Draft Permit’s emphasis on the readability of only the "original" data subtly indicates a delineation between "original" and its subsequent versions, be they "copied" or "transferred." Such a linguistic choice brings forth a pivotal question: Are subsequent iterations of data, derived from the original, not being held to the same stringent legibility standards?

With this revised phrasing, stakeholders could deduce ambiguities in the standards of data readability, particularly if the data travels through various stages of transcription, replication, or digital conversion. This inferred shift could unintentionally obscure transparent review processes, as stakeholders grapple with the clarity and accessibility standards applied to data beyond its initial recording.

While the NMED's feedback, emphasizing the "Consistency of language in the same sentence," suggests a mere linguistic alignment, stakeholders attentive to upholding stringent data transparency, validity, and accessibility standards may view this nuanced transition with wariness. And when considering the utmost significance of linguistic clarity, especially in realms like waste characterization, even subtle changes in phrasing can bear profound implications.

Thus, due to the intricacies of the language and its potential to impact data integrity and transparency, a thorough exploration of the changes introduced in Attachment C3, Section C3-4a be held during the coming public hearing. Such discussions are essential to fortify a unified understanding and confidence in the protocols governing data capture, transmission, and interpretation."

6. Topic: Implications of Altered Monitoring Language in the WIPP Facility Permit (Attachment E, Section E-1a(3)).

Objection: Removal of Proactive Monitoring Language and Implications for Safety Protocols.

In the transition from the First Draft Permit to the Second Draft Permit, a pivotal change was observed within Section E-1a(3) of the Monitoring Systems, where the phrase "before they are allowed to develop" was omitted. This alteration, at first glance, may appear subtle; however, when one deeply probes the potential safety ramifications of this change, concerns arise.

The verbiage in the First Draft Permit suggested a strong proactive approach. Specifically, it implied that the geomechanical monitoring system was designed to actively identify potential hazards before they could even manifest. This portrays a robust and forward-thinking safety protocol. Conversely, the revised language in the Second Draft Permit leans towards a potentially more passive stance, indicating that the system identifies unsafe conditions only as they come into existence, rather than preventing them from arising in the first place.

This subtle shift, if not purely linguistic, may inadvertently alter stakeholders' perception of the WIPP facility's commitment to safety. By its nature, prevention is always more desirable than detection after the fact. For stakeholders, especially those ardently advocating for the highest safety standards, this linguistic change might be seen as a dilution of the safety protocols in place.

Once again, and hopefully not to deaf ears, clarity is paramount when it comes to regulatory and safety documents. The significance and sensitivity attached to the WIPP facility's operations mean that even minor linguistic adjustments can lead to broad interpretations. By removing the proactive tone in the description of the geomechanical monitoring system, there exists room for interpretation that could be construed in various ways, potentially not aligned with the initial intent.

As for the NMED's note in their issued Table of Changes, which labeled this change as "Excess language removed," this characterization warrants scrutiny. The term "excess" implies redundancy or

lack of value, but considering the potential safety implications of the omitted language, it may not be appropriate to deem it as "excess." The language originally present could be crucial in conveying the rigorous and preventive approach the WIPP facility intends to take in its monitoring processes.

Given the significant potential implications associated with this seemingly diminutive change in language, it is paramount to understand the rationale behind this alteration in detail. As such, the reasoning and implications surrounding this change must be thoroughly discussed and potentially challenged during the upcoming public hearing. This discussion will ensure that the revisions genuinely prioritize the safety of the environment, the public, and maintain unwavering standards in monitoring practices.

7. Topic: Changes in Inspection Procedures for the Facility Cask Transfer Car at the WIPP Facility (Attachment E, Table E-1a).

Objection: The Impact of Modifying Inspection Procedures in Table E-1a and Its Potential Ramifications for Safety Standards.

The most recent changes made in Attachment E, Table E-1a, specifically for the Facility Cask Transfer Car, might appear innocuous at a cursory glance. In the initial draft, three specific inspection procedure numbers were cited: "WP 05-WH1704, PM041186 (Quarterly), PM041195 (Annual)". Yet, in the subsequent draft, the quarterly and annual procedures have been removed, leaving only the solitary "WP 05-WH1704". NMED's official justification for this alteration is that, at Permittees' request, they removed an "incorrect inspection frequency". And this ironically came after a purge of similar citations from many other areas of the same table when the NMED published the First Draft Permit.

For an ordinary person without deep technical knowledge, discerning the implications of this change is daunting. The presence of an "incorrect" frequency in the Permit immediately calls into question the meticulousness of the procedures and oversight in its creation and maintenance. Additionally, if inspection schedules have evolved since the last permit renewal, or even since the publication of the First Draft Permit, then the reduced comment period has further complicated a stakeholder's ability to research and understand these details before the abbreviated deadline. It's paramount for the public's trust that such vital documents reflect due diligence and comprehensive scrutiny.

Further complicating the matter is the absence of a detailed explanation as to why these frequencies were labeled "incorrect". Was the initial inspection schedule too rigorous, or conversely, not stringent enough? Or were these schedules no longer applicable? The change, as presented, leaves room for speculation and concern for the layman. Safety protocols, especially in critical operations like those at the WIPP facility, shouldn't merely exist on paper but must be regularly practiced and adhered to. If inspections were initially planned to occur on a quarterly and annual basis and then casually removed, it calls into question the thoroughness and frequency of these safety checks.

It goes without saying that consistent alterations in safety protocols, especially without comprehensive public clarification, can potentially erode public trust. The community relies on stable and rigorous safety protocols to have confidence in the WIPP facility's operations. Hence, even if the change is based on sound reasoning, the absence of an exhaustive explanation can lead to doubts and concerns.

In sum, while the change might seem minor on paper, its potential ramifications, coupled with the lack of detailed explanations, make it a matter that requires deeper scrutiny. It is essential for the NMED and the involved parties to offer a more exhaustive rationale for this alteration, reaffirming their commitment to the safety and trust of the public and environment. This matter must be a significant point of discussion in the public hearing to come, ensuring the NMED maintains rigorous safety standards over the WIPP facility.

8. Topic: Clarification of "Pre-evolution" in RH TRU Mixed Waste Inspection Schedule/Procedures (Attachment E, Table E-1a, footnote c).

Objection: Potential Implications and Ambiguities Arising from the Modification of the Footnote.

The recent linguistic alteration in the "Pre-evolution" footnote within the remote-handled (RH) TRU Mixed Waste Inspection Schedule/Procedures seeks to provide clarity to the term "evolution" by defining its initiation phase. On the surface, this change may seem like a minor adjustment to improve language clarity. However, when delved into with greater scrutiny, it unfolds several concerns that necessitate a comprehensive review.

The introduction of "the process that begins with" pinpoints a specific starting moment for the "evolution." This provokes one to ponder upon the purpose of this modification. Was the original phrasing leading to ambiguities or misinterpretations? Introducing this modification might inadvertently suggest that prior practices, possibly spanning over several years or even decades since the last permit update, could have operated on an ambiguous understanding of when the "evolution" truly begins.

Precision and unambiguity in operational guidelines, especially those dictating waste handling processes, are of utmost importance. Not to beat a dead horse, but the slightest hint of vagueness can catalyze operational discrepancies. The new clarification, while seemingly striving to provide a unified interpretation and practice, hints at the possibility of prior inconsistencies in both interpretation and implementation.

For stakeholders, particularly those deeply integrated with the daily operations of the WIPP facility, this minor clarification could raise substantial queries. Is this refined definition an acknowledgment of prior instances where inspections might have been conducted at inappropriate phases? Or is this a forward-looking change, intending to ward off prospective misinterpretations?

The NMED's choice to label the Permittees' editorial as "clarified language" in the Table of Changes seems overly reductive for a change that carries significant connotations for waste handling safety. Stakeholders and the public rightfully deserve in-depth insights when operational definitions undergo alterations, irrespective of the perceived magnitude of the change. Such transparency ensures that safety protocols maintain their rigor.

Considering these articulated concerns, it becomes paramount to foster a detailed dialogue during the public hearing to demystify both the motivations behind and the repercussions of this "clarification." Engaging in such discourse will assure that facility operations are transparent, consistent, and strictly adhere to the pinnacle of safety standards.

Thus, a thorough examination and discussion of the language alterations pertaining to the definition of "Pre-evolution" and "evolution" must ensue during the upcoming public hearing. This discussion is not only crucial for transparency but also ensures that safety, operational standards, and public trust are unswervingly maintained.

9. Topic: Linguistic Modification in the Inspection Procedures for RH TRU Mixed Waste (Attachment E, Table E-1a, footnote d).

Objection: The Shift in Tense in Footnote d and Its Potential Consequences on Inspection Practices.

The linguistic modification witnessed in footnote d of Attachment E, Table E-1a, moving from the future tense to the present tense, is not merely a grammatical adjustment. Such changes, while appearing minor, can infuse nuanced meanings with potential implications for oversight, operational clarity, and stakeholder interpretation.

In the First Draft Permit, the phrasing "will be inspected" and "will verify" alludes to a potential or intended action, signaling that inspections might occur under specific circumstances. In contrast, the Second Draft's "are inspected" and "verifies" solidify these actions, portraying them as a consistent and ongoing routine. This transition raises immediate questions: Is the change indicative of an evolved practice or simply a clearer depiction of existing procedures?

The shift from a tentative "will verify" to a definite "verifies" not only transitions the intent from a possible action to a confirmed one but also casts light on the degree of assurance that inspections are consistently confirming the presence of emergency equipment. The revised language, by its nature, places an accentuated burden on operational staff, emphatically stating what is currently being done rather than a potential future action. Such precision in language leaves little room for oversight or ambiguity and puts the operational team under a heightened sense of responsibility and accountability.

Beyond the realm of operations, the modified phrasing beckons concerns over historical compliance. If this modification is strictly a linguistic realignment without a mirrored change in practices, it raises questions about the thoroughness of past inspections. Were inspections previously carried out as frequently and rigorously as now indicated by the revised language? If there's any discrepancy, this could pose concerns about the facility's historical adherence to safety standards.

Additionally, the summary given by the NMED in their Table of Changes, which describes the alteration as merely "Changed verbs to present tense," might appear to oversimplify a change with potential operational and oversight implications. Such a minimalistic description could be seen as reducing the change's gravity, leaving stakeholders without a transparent understanding of the implications of this linguistic shift.

Considering the scope of this change and the myriad implications on safety, procedural clarity, and stakeholder understanding, a thorough exploration of this modification during a public hearing becomes essential. It's crucial to determine if the language shift genuinely reflects the current inspection practices and if these practices are aligned with the highest safety and operational standards. As a result, an exhaustive discussion on the changes to the linguistic tense in footnote d of Attachment

E, Table E-1a should be given time during the upcoming public hearing. Such dialogue will ensure that the language and practices genuinely prioritize safety, operational transparency, and the utmost clarity for all stakeholders.

10. Topic: Removal and Implications of the "Permit Part 2" Reference in TRU Mixed Waste Provisions (Attachment G3; Section G3-3b).

Objection: Ambiguity and Oversight in Reference and its Implications for Interpretation and Oversight of TRU Mixed Waste.

The removal of the reference "in Permit Part 2" transitioning from the First Draft Permit to the Second Draft Permit demands meticulous scrutiny, given the possible implications for oversight, clarity, and interpretation. While such changes might seem insubstantial, they can unintentionally birth ambiguities, impeding the permit's precise interpretation and execution.

In the First Draft Permit, the reference to "Permit Part 2" provided lucid context to the origin and regulatory bedrock of the TSDF-WAC. Absent this detail, stakeholders might grapple with discerning the foundational basis of the TSDF-WAC. Such gaps foster compliance and interpretation challenges, potentially culminating in oversight and disparate application.

The lingering "incorrect reference to a part" in the current permit before the First Draft Permit's inception is unsettling. It signals possible deep-seated lapses in the review and drafting protocol. Regulatory documents, especially those concerning hazardous waste, demand unerring clarity and consistency. Even minor oversights can cast aspersions on the review's rigor and the depth of attention to critical safety and compliance details.

Of note is the fact that this lapse was spotlighted only post the Permittees' editorial comments from April 18, 2023. This beckons the question: Did the NMED not perform stringent internal evaluations before the First Draft Permit's release? Such eleventh-hour corrections illuminate potential cracks in the NMED's internal audit armor. And, on a significantly reduced comment period for a RCRA draft permit, there’s just simply not enough time for the layman to discern the truth.

The WIPP facility, a crucible for TRU mixed waste, mandates an unwavering commitment to precision and exhaustive detail. Administrative lapses such as these can, by extension, cast shadows over the facility's broader regulatory and operational rigor. Persisting textual inaccuracies through multiple drafts raise the specter of what might lurk in the oversight of intricate operational domains.

Given the resonance this has for clarity, oversight, and the faith reposed in the regulatory trajectory, this alteration merits a deep dive during the public hearing. The discourse should pivot around delineating the oversight's genesis in the current permit, probing the NMED's review fabric for future infallibility, and crystallizing the TSDF-WAC's regulatory milieu for unambiguous stakeholder comprehension.

VII. PRELIMINARY CONCERN: REJECTION OF RCRA AND HAZARDOUS WASTE ACT.

On September 20, 2020, I addressed a letter to the Acting WIPP Group Program Manager of NMED, Megan McLean, titled “Preliminary Comments Regarding the 'Proposed Final Permit' for the Waste Isolation Pilot Plant (WIPP)” [AR 230425.261]. In it, I highlighted my apprehensions regarding the curtailed comment period for the WIPP's Proposed Final Permit. I contended that this truncation breaches the 45-day stipulation of the RCRA and advocated for NMED to categorize the permit as a draft in accordance with RCRA. This approach not only prevents possible legal entanglements but also fortifies the public's trust in the process.

Regrettably, the next morning, on September 21, 2020, she penned a pretty, but disappointing, response to my letter, stating:

> “Hello, Mr. Maxwell,
>
> Thank you for your comment. NMED will provide a detailed response to your comment when it issues a response to all comments. In sum, the Proposed Final Permit for the Waste Isolation Pilot Plant does not fall under the statutory and regulatory requirements for a draft permit. As noted in the August 15, 2023, Notice of Public Meeting: On June 20-23, 2023, NMED, in conjunction with the Permittees, held formal negotiations with parties who had submitted a hearing request and were in opposition to the Draft Permit. On June 23, 2023, the parties signed a Settlement Agreement and Stipulation on the Draft Permit [AR 230611]. As a result, a hearing will not occur, and as agreed during negotiations, the comment period will remain open to the close of this meeting on September 22, 2023. While NMED will respond to all comments received, they will not alter the Proposed Final Permit.
>
> Thank you for submitting your comment,
> Megan”

The position articulated by NMED, as communicated by Megan, stands in sharp contrast to both the explicit guidelines and the underlying principles of the regulatory landscape.

The naming of the "Proposed Final Permit" can be likened to a wolf in sheep's clothing. By presenting it under this guise, the Secretary appears to be sidestepping its true nature. Given the substantial changes it carries from its predecessor, its publication and issuance via a public notice, and its current status being open to public feedback, it unmistakably functions as what one would recognize as a draft permit under the RCRA. To argue otherwise based solely on semantics not only diverges from the intent of the RCRA but also obscures the principles of transparency and due diligence, both of which are at the heart of the permitting process. Rightfully designating it as the Second Draft Permit is akin to approaching Holmes's lion: when we walk up and lay hold, what seemed a daunting challenge reveals itself as the same old 'donkey of a question of law.'

But here, needless to say, compounding these concerns is the NMED's reliance on the Settlement Agreement to effectively curtail the public's right to a hearing, a right clearly enshrined in the New Mexico Hazardous Waste Act. The act, specifically NMSA 1978 74-4-4.2 (H), mandates: "No ruling shall be made on permit issuance, major modification, suspension or revocation without an opportunity

for a public hearing..." Through intricate maneuvering, the Secretary seems to be in the process of bypassing this unequivocal mandate, negating the public's fundamental right to a hearing on each pertinent issue raised herein. While a settlement might address specific disagreements, it should never overshadow the broader imperative of public engagement and oversight - and never from a new participant who has raised substantive concerns.

What becomes evident, beyond the immediate matter of the "Proposed Final Permit," is a potentially precarious precedent being set. By circumventing the RCRA and the New Mexico Hazardous Waste Act's stipulations, the NMED risks eroding the trust the public places in it and invites unforeseen complications, inducing likely legal challenges. These laws weren't simply created as administrative procedures; they stand as safeguards to ensure public safety, environmental integrity, and the transparent operation of our institutions.

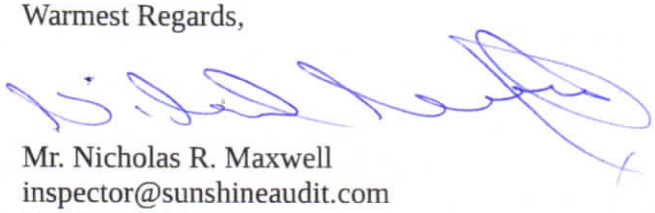
In wrapping up, while shortcuts like relying on a settlement agreement might seem practical in the short term, it is essential to recognize the broader implications and the significance of adhering to established norms and regulations. The request here is for the NMED to introspectively examine its approach, recognize the clear alignment between public rights and the regulations in place, and make decisions that uphold the true spirit of these laws.

VIII. CONCLUSION.

In an era where transparency, public trust, and adherence to established regulations are paramount, the actions and decisions surrounding the WIPP facility permit raise pressing concerns. It is not merely a question of nomenclature or semantics, but a profound issue of integrity, public involvement, and the sanctity of our environmental laws. By circumventing the opportunity for a public hearing – the cornerstone of democratic engagement – the Secretary risks undermining the very principles upon which the NMED was founded. The people deserve a platform to voice their concerns, to scrutinize the processes, and to ensure that decisions made today honor both the letter and spirit of the law, safeguarding the environment for generations to come.

While the NMED has promised there would be no public hearing, the situation has evolved since then. I urge the NMED to grant a public hearing on this matter, as required by law, providing all interested parties, myself included, a genuine chance to be heard and to ensure that our shared environmental legacy remains protected and cherished. Anything less would be a disservice to the principles of justice, transparency, and the enduring promise of a better tomorrow.

Warmest Regards,



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