

Jan. 27, 2023

Ricardo- please excuse the casual nature of my personal commentary on the permit, which I am submitting for the record. I've gone back and forth on this a dozen times and haven't ever felt like it's ever said exactly what I wanted. So, my hope is that the candor of my statement may help me make a point here in a way which I could not achieve with a more formal letter.

As I've noted in previous conversations, I'm extremely disappointed by the NMED's proposed list of modifications to the WIPP permit. I believe weaponizing the regulatory process, for what certainly has the feel of being a political maneuver, is both unethical and ultimately destructive.

I don't know how much time I want to devote to some of the specific concerns here. After all, the NMED has lawyers and regulatory experts. You don't need me to point out that a state regulatory document can't preempt a decision by the United States Congress about the Land Withdrawal Act (Part 1: Section 1.3.1), or that it isn't germane to task a federal waste disposal facility with the burden of siting its successor (Part 2: Section 2.14.3). I'd also imagine that those with more regulatory or legal knowledge than myself don't need me to point out that a provision to halt shipments to WIPP based on *any allegation* of noncompliance (Attachment C, Section C-1d) would provide too much power to any individual deliberately wanting to stop the process.

Such statements certainly have the feel that they were more designed to produce good soundbites appealing to the anti nuclear set than actually ever become policy.

I guess I will say that, of all the problematic language being proposed, the one requiring that 50 percent of the waste going to WIPP come from Los Alamos probably takes the cake in terms of being completely unrealistic. (Part 4, Section 4.2.1.4).

Those of us with even a little bit of knowledge about WIPP know that different campaigns from different generator sites ebb and flow depending on need. Nor is it ethical to demand that the bulk of such a federally funded facility be devoted for state use. LANL should absolutely take priority, but a request for some sort of arbitrary volume division is unreasonable.

As we've stated numerous times- Carlsbad fully supports taking every bit of TRU waste from LANL that LANL is ready to send. Carlsbad could certainly be an ally of the NMED in efforts by the state to encourage LANL and the DOE to increase shipments.

I'm aware of the fact that the NMED has been clarifying that these are just starting spots at the negotiating table. That the regulatory agency is shooting for Mars in order to reach the Moon, so to speak. Once again, I believe that the regulatory process must remain clinical and aloof from this approach. The regulatory process must be based on science and safety and not employ tactics best left for sales.

I'm aware of the other nuclear related topics in the state right now, such as uranium mining and the Trinity downwind issue. There have been books written and articles published, and there is no doubt a pressing political need to be seen to be tougher on all things nuclear.

My thought here is that WIPP does not belong on the same side of the equation as these other topics. WIPP is a solution, and a darn good one. The image that WIPP represents "yet another chapter" in some fictional tally of New Mexico's nuclear burden might be emotionally potent, but it is also highly misleading. It certainly ignores the fact that a lot of waste that had previously been sitting around northern New Mexico is now safely emplaced at WIPP.

I'm also aware of the fact that this all came out shortly after an election, and at the start of a second term.

I'm also aware of the fact that there are probably issues of which I am not aware. In other words, there may have been negotiations between the DOE and state, both related to this permit and to other topics such as road funding, that haven't gone well lately. I'm aware of the fact that these unrealistic permit proposals may be the outcome of the NMED's frustration with the federal agency (*we told you guys to pick up the pace at LANL....we told you guys to provide more road money...we told you guys to stop ignoring us...*). Copying the Christmas wish list from WIPP's biggest opponents and pasting it into the 10 year permit may therefore be seen as the equivalent of throwing a brick through the window...after all else failed.

To which I would again respond that I do not believe that the permitting process is the appropriate place for such a pushback. I'd add that New Mexico is one of a very small number of "total Blue" states in the country right now. The state has two U.S. Senators and three members of the House of Representatives who are allies belonging to the same political party as the Governor, as well as the federal executive office itself. Certainly, the state could have resolved its issues with the DOE through these channels, instead of hijacking the regulatory process.

As I've said in the past, I've generally been impressed by the NMED's tendency to carefully define the perimeters of any given regulatory process. This is an extremely important part of any legal process, as it forces discussions to remain civil and on point. In fact, I've been at meetings in which NMED officials have gently chastised individuals for bringing up unrelated topics that are now being introduced as part of the permit? I am concerned that the NMED's current pattern of behavior will lead to a more "free for all" component in future meetings, lessening the value of such processes.

The NMED's traditional clinical nature preserved the process and established its credibility as a neutral regulatory entity. That changed with the release of the Dec. 8 "fact sheet." I'm very concerned about the erosion of that process.

Finally, I hate that the NMED's recent permit proposal will certainly be seen as yet another "us against them" salvo in the ongoing cultural clash that has dominated and diminished our country over the past decade.

I'm a political moderate in the Red Region of a Blue state, and, in absolute sincerity, there is nothing I want more in life right now than a return to civility and cooperation. Yet the NMED's recent proposal, with the very real risk it poses to thousands of Southeast New Mexico jobs, is certainly being perceived as yet another example of northern New Mexico being utterly indifferent to the wishes of the residents of the Southeastern portion of the state.

Thank you for your time. I very much have enjoyed my professional relationship with you and other members of the NMED, and I hope we can work to restore that previous level of courtesy and cooperation.

Kyle Marksteiner (Submitted as an individual)