

**Tribal Radioactive
Materials Transportation
Committee**

- Agua Caliente Band of Cahuilla Indians
- Confederated Tribes of the Umatilla Indian Reservation
- Consolidated Group of Tribes and Organizations
- Little Traverse Bay Bands of Odawa Indians
- Mashpee Wampanoag Tribe
- Morongo Band of Mission Indians
- Navajo Nation
- Nez Perce Tribe
- Omaha Tribe of Nebraska
- Oneida Nation of Wisconsin
- Prairie Island Indian Community
- Pueblo de San Ildefonso
- Pueblo of Jemez
- Pueblo of Laguna
- Pueblo of Pojoaque
- Pueblo of Tesuque
- Santa Clara Pueblo
- Seneca Nation
- Shoshone-Bannock Tribes
- Timbisha Shoshone Tribe

Ricardo Maestas
WIPP Group Staff Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505

February 18, 2023

RE: WIPP Renewal Draft Permit

Dear Mr. Maestas,

The Tribal Radioactive Materials Transportation Committee (TRMTC) respectfully submits the attached comments in response to the Waste Isolation Pilot Plant (WIPP) Renewal Draft Permit and the New Mexico Environment Department's (NMED) *Notice of Public Comment Period and Opportunity to Request a Public Hearing on a Permit Renewal Draft Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (EPA Identification Number NM4890139088-TSDF)*.

These comments highlight key concerns of TRMTC and should not be viewed as representative of any specific Tribe, nor the views of all Tribes. Please contact Lauren Rodman, staff support to TRMTC, at lrodman@northwindgrp.com or Elizabeth Helvey at ehelvey@northwindgrp.com regarding any matters related to these comments.

Please let us know if you have additional questions.

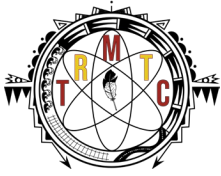
Sincerely,

Richard Arnold

Richard Arnold, Pahrump Paiute Tribe/Consolidated Group of Tribes and Organizations
TRMTC Co-Chair

Laurie Hernandez

Laurie Hernandez, Shoshone-Bannock Tribes
TRMTC Co-Chair



Tribal Radioactive Materials Transportation Committee Comments
in Response to the Waste Isolation Pilot Plant (WIPP) Renewal Draft Permit and New Mexico Environment Department's (NMED) *Notice of Public Comment Period and Opportunity to Request a Public Hearing on a Permit Renewal Draft Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (EPA Identification Number NM4890139088-TSDF)*.

February 18, 2023

This letter is written on behalf of the Tribal Radioactive Materials Transportation Committee (TRMTC) which consists of representatives from 20 federally recognized Native American Tribes throughout the United States that are potentially impacted by U.S. Department of Energy (DOE) activities that include shipments and storage of radioactive materials of interest to our membership. TRMTC tracks a variety of activities tied to the transport of radioactive waste and materials, including low-level waste (LLW), transuranic (TRU) waste, spent nuclear fuel (SNF) and high-level radioactive waste (HLW). As such, TRMTC provides input to DOE and other federal and state agencies on proposed and existing programs and activities of interest to Tribes including the pending Waste Isolation Pilot Plant (WIPP) Renewal Draft Permit and New Mexico Environment Department's (NMED) *Notice of Public Comment Period and Opportunity to Request a Public Hearing on a Permit Renewal Draft Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (EPA Identification Number NM4890139088-TSDF)*.

Several member Tribes have direct experience with the DOE WIPP shipments and site because of cultural and historic ties that may be impacted by the processing, transportation, and storage of TRU waste shipments at Carlsbad, New Mexico. Our intent is to convey our support of member tribes that are involved in WIPP activities. Further, our desire is to share important points through the following comments relating to the WIPP Renewal Draft Permit and NMED's *Notice of Public Comment Period and Opportunity to Request a Public Hearing on a Permit Renewal Draft Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (EPA Identification Number NM4890139088-TSDF)*. These comments represent key concerns of TRMTC and should not be viewed as representative of any specific Tribe, nor the views of all Tribes.

- 1. Sovereignty of Native American Tribes:** The Department of Energy (DOE) and all federal agencies must recognize and abide by the unique obligations between the federal government and federally recognized Native American Tribes (hereinafter referred to as Tribes). These obligations stem from the federal government's trust responsibility to Tribes, a legal principle originating from the unique relationship between Tribes and the federal government. Trust responsibility encompasses legal, fiduciary, and moral obligations to protect tribal treaty rights, lands, assets, and resources. Numerous federal agencies have developed policies recognizing tribal sovereignty and affirming this trust responsibility, including the *DOE Order 144.1 on American Indian Tribal Government Interactions and Policy*. Additionally, Executive Order 13175 on *Consultation and Coordination with Indian Tribal Governments* requires that federal agencies honor tribal sovereignty and consult with Tribes in development of policies or when considering federal actions that impact Tribes. On January 26, 2021, the Biden Administration released a *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships*, which reaffirmed the Administration's commitment to Executive Order 13175 to reaffirm the special relationship with tribal governments that still exists.



- 2. Tribal Consultation:** TRMTC reiterates the federal government Trust responsibility to Tribes that requires consultation on a government-to-government basis. As sovereign nations, government-to-government consultation is required between the federal government and Tribes. This responsibility cannot be relegated to federal contractors or site permittees. Federal consultation is unique and requires meaningful dialogue conducted in good faith and on a government-to-government basis.

Furthermore, TRMTC reiterates that tribal rights and their interests extend beyond reservation boundaries. The federal government must uphold its trust responsibility to protect tribal rights and determine which Tribes have ties to the WIPP site and/or which Tribes may be impacted by TRU waste shipments. When conducting consultation, the DOE must recognize tribal nations are not confined to reservation boundaries; consultations must consider tribal Trust Lands, ceded territories, treaty rights areas, and culturally affiliated areas in addition to reservation lands tied to the impacted area.

Under Section 1.15.3. (Government to Government Consultation), TRMTC recommends that, in addition to DOE consulting with "...affected tribes and pueblos in New Mexico when developing the CRP [Community Relations Plan]..." and specifying "...how DOE will consult on a government-to-government basis with affected tribes and pueblos..." language be added that stipulates DOE must include how it identified and determined which tribes and pueblos would be affected and that tribal Trust lands, ceded territories, and culturally affiliated areas be considered.

- 3. Transportation Comments.** TRMTC supports the language added by the State of New Mexico in Section 1.7.7.1 requiring compliance with transportation guidance to ensure safe transport through NM, since those activities cross several Pueblos. In addition, we encourage DOE to consider Tribes that, although may not have a transportation route across their land, there may be culturally significant sites that are traversed or near transportation routes. In those cases, DOE should involve the impacted Tribes and Pueblos equally to those with routes through Pueblo or reservation traditional homelands.
- 4. Inclusion of Federally Recognized Tribes in Emergency Planning Activities and Communications:** Tribes must be included in planning and communications efforts associated with any emergency preparedness and planning activities related to WIPP activities and TRU waste transportation. Tribal governments, as sovereign nations, should be integrated in the same manner, communications and emergency response planning, training, and exercises as afforded to state and local governments. In this regard, TRMTC supports NMED's updated requirements for the WIPP Community Relations Plan to include quarterly public forums. Please consider requiring WIPP to invite all culturally affiliated Pueblos and Tribes along the transportation route to participate the meetings.