

# John Heaton

RE: WIPP 10YR PERMIT COMMENTS ON DRAFT 1/1/23 (EXERPTS FROM LIST ON FACT SHEET)

Dear Mr. Maestas; Let me first say that it is remarkable that NMED in its draft 10yr Permit for WIPP is putting clauses in the permit that I would call “poison pills” to give the state arbitrary positions to be able to shut WIPP down prematurely or to leverage the project with the federal government. It is inconceivable that the State of New Mexico does not recognize the national importance of WIPP in the cold war clean-up effort in the country. Because of WIPP, 22 sites have been cleaned up of TRU waste which has resulted in the elimination of the potential for exposures to those working and living in those areas. Perhaps, more than any other state, New Mexico has a significant obligation because of its role in the development of nuclear weapons to do everything it can to help with the clean-up of the weapon’s complex. New Mexico’s sacrifice of the thousands of soldiers from National Guard units that were called up for WWII that were killed, wounded, endured the Bataan Death March and those that survived came home to a future life of horror from PTSD. It is a somber sight to view the thousands of stately white markers at our National Cemetery in Santa Fe and reflect on the pain and suffering of those solders. The question that I constantly have, is why is WIPP always under attack by an ungrateful, small, but seemingly vocal group, who distort the facts and make accusations that have no basis in fact. WIPP is the only licensed deep geologic repository in the U.S. for defense only transuranic waste that is playing a major role in clean up. WIPP’s transportation system is the envy of every trucking company in the U.S., and has had no releases. WIPP provides 1,200 jobs in the Carlsbad area, has a budget of over \$400 million annually, is performing safely and securely as designed, has approximately 60% of its capacity remaining and it is a credit to New Mexico. WIPP is NOT a political football, and should not be treated as such. It is a sophisticated, highly engineered repository that should be supported technically and politically for the good of the nation.

The following numbers refer to the “so called” NMED Fact sheet numbers.

1. Tying annual renewal to “accurate” inventory destined for WIPP runs risk of NMED deciding WIPP should have a pre-mature closure. A) Historically, more waste is discovered that was unknown or more voluminous than thought if buried or otherwise unknown. B) If a minor discrepancy occurs in the inventory due to some inadvertent oversight his gives the state the opportunity to shut WIPP down. This should be removed. 2. WIPP state permit revocation if a change by Congress to the LWA if volume increased. A) WIPP and DOE have no control over the actions by Congress when Congress decides a change in law is to the benefit of the country. B) Congress would not increase the TRU Waste volume limits if there were not a national need to do so. C) WIPP is barely using 2 sections of the 16 sections available for waste disposal – why would NM want to restrict the clean-up of the weapons complex when so many New Mexicans sacrificed themselves and our national labs made it possible to win WWII and save the lives of thousands of Americans? D) Congressional action pre-empts state law and an expansion of capacity would certainly set aside the invalidation of the WIPP State Permit. This should be removed. 3. Sec. 4.2.1.4 Part 4 p.7 attempts to define amount of waste to be emplaced from LANL as an amount equal to the total “stored” waste throughout the complex. The paragraph defining this makes NO sense, and defies logic to compare “stored” waste vs what should be emplaced from LANL. A) WIPP has acknowledged it will take all prepared waste for shipment to WIPP when it is characterized, meets the WAC and ready for shipment. LANL’s inability to provide waste for shipment is not WIPP’s responsibility, but that of LANL. B) Most likely the inability of LANL to

provide waste ready for shipment to WIPP is the result of lack of resources, but new appropriations to LANL for waste preparation should help correct this. C) The risk of exposure to the hazardous material is much less than the risk of exposure to radioactive materials (estimated to be 1,000 times lower). Consider the scenario where NMED issues a compliance order to LANL, which curtails or stops shipments to WIPP. With limited or no shipments to WIPP from LANL, this would curtail shipments from other generator sites, and thereby increasing their risk from storage. Also, with no shipments coming to WIPP, underground conditions would deteriorate adding risk to WIPP workers. This should be removed and an agreement between WIPP and LANL put in place to define shipment expectations.

4.2.1.4 Prioritization and Risk Reduction of New Mexico Waste Pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.10.k), within 15 days of publishing the Annual Transuranic Waste Inventory Report (ATWIR), the Permittees shall certify to the NMED that there is sufficient disposal capacity to dispose of the New Mexico generator/storage site waste detailed in this report. The report shall contain the underlying calculations and data to validate the certification. While this permit remains in effect, the Permittees shall prioritize the emplacement of stored TRU mixed waste at WIPP from the clean-up activities at the Los Alamos National Laboratory (LANL). On an annual basis, the volume of stored TRU mixed waste emplaced in a HWDU from the LANL must exceed the volume of stored TRU mixed waste from all other individual generator sites. Again, this makes no sense and it is a ridiculous concept.

4. Suspend shipments based on “any allegations” or evidence of threats to human health or the environment or WAP non-compliance. “The Secretary reserves the right to prohibit... TRU mixed wastes at the WIPP facility for, but not limited to, the following reasons: 1...2...3....or 4 based on any allegation of noncompliance.” Reasons 1, 2, 3 are already in RECA regulations and are needed to be repeated. Reason (4) is not a regulatory requirement and is totally unreasonable. A) The term any and the use of the term “allegations” is particularly onerous due to possible allegations from disgruntled employees or the anti-WIPP community which has been particularly dishonest in stating non-factual and non-scientific comments about WIPP. B) The term “allegations” without solid evidence has no place in the Permit and should be removed. C) Disruption of shipments only serves to extend the closure date for WIPP making this addition to the permit counterproductive to the presumed intent of the additions by NMED. Section C-1d should be removed from the permit.

5. Root analysis of container issues – Again, NMED is assuming the role of EPA by introducing an analysis of radioactivity contamination. NMED has no authority over radiation, and if they want an analysis of contamination by RCRA constituents this should be framed in that way to eliminate confusion. The risk from RCRA constituents is 1000 times less than the radioactive constituents

Airborne constituents like VOC's are already tested for routinely. This seems to be far outside the mixed waste components under NMED control and should be eliminated from the permit or redefine the purview of NMED to only include mixed waste constituents. 6. Require compliance with Western States (WIEB) transportation guidelines. A) WIEB is a very political organization that is prone to over regulate everything about transportation and to protect the west from the eastern U.S. People serving are the WIEB Board seem to be more self-serving in terms of “make work” to keep their jobs. WIEB rules must be tempered with approval by DOE who has not been unreasonable in abiding by their suggestions. Codifying this in the Permit gives them more power to dictate unnecessary rules. WIPP transportation has been the best in the world and the present cooperative agreements between parties has worked very well. This is completely unnecessary.

7. Report annually on progress made by WIPP to site another TRU repository. This new requirement is truly concerning due to the fact that NMED is declaring they are not interested in a New Mexico business, its jobs or prestige from hosting a facility that is cleaning up the legacy of the cold war. It is this attitude of government that holds New Mexico back and keeps New Mexico

from diversifying.

A) WIPP has no authority to do this, no budget or real inclination to take on this project. B) If NMED or the State wants to pursue another TRU repository, it is up to NM political leadership and the NM Congressional delegation to convince Congress to make it happen. C) NMED must know that DOE cannot make budget requests without authorizations and budget. D) This requirement is way outside a permit requirement and is ludicrous.

8. Require public Pre-submittal meetings for Class II and III PMR's. WIPP has voluntarily, in good faith provided pre-permit public meetings. This is not a requirement of RCRA and is not being required of any other HWFP's permitted. If NMED is going to require pre-submittal meetings of WIPP it should require the same of all the other 10 HWFP's permitted. 9. Summary of

monthly O&G activity and now Salt Water Disposal wells within 1 mile of the LWA boundary. This is any overly burdensome requirement for WIPP to contend. NMED can easily contact the State Land Office for that same information which is bound to be more accurate.

10. Biennial technical reviews of generator sites and a determination of any issues. A) No comment other than active NNSA sites are very restrictive in their access. 11. Panels 11 and 12. No

comment 12. VOC based limits of rooms and panels and action required. No comment, it appears limits have not changed and action is to reduce amounts by 50% 13. Add isle space. No comment

14. Post closure fencing of footprint. No comment 15. Description of post closure panels

9,10,11,12 after closure. No comment 16. Reference to chemical incompatibility. No comment

17. Disseminate lessons learned from across the complex to those of concern. No comment

18. Refusal to accept any WAP changes. A) another ridiculous addition when it is reasonable to make changes if changes are needed. 19. Observe caucus audits to confirm audits have been

observed. No comment 20. Will not accept WAP changes. A) Same as above, if changes need to be made when reasonable and technically needed, changes should be allowed. This is ridiculous.

21. Reference to certain check list additions. No comment 22. "g" force peak ground acceleration for facility. A) It is technically important to understand "g force" versus reactor scale numbers,

definition and facility impacts when moving with the earth. 23. Accept ppts/billion capability of

Lab. 24. Require to submit closure design with closure of a HWDU when closed. No comment

25. Clarifications No comment. Respectfully, John Heaton