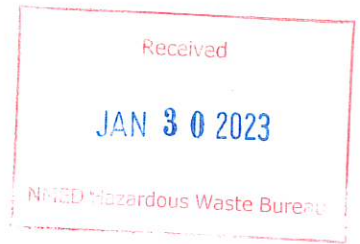




## Veterans For Peace

Donald and Sally-Alice Thompson Chapter #63  
Albuquerque, New Mexico



John E. Wilks, III  
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Winston, NM 87943

January 27, 2023

Ricardo Maestas  
WIPP Group Staff Manager  
New Mexico Environmental Department (NMED)  
2905 Rodeo Park Drive, East Building #1  
Santa Fe, New Mexico 87505-6303

Re: Comment on a Permit Renewal: Draft Hazardous Waste Facility Permit for the  
Waste Isolation Pilot Plant (WIPP)

Dear Mr. Maestas:

This public comment for the Draft Hazardous Waste Facility Permit your office is considering for the Waste Isolation Pilot Plant (WIPP) is timely submitted as the filing deadline is February 18, 2023.

### **#1 CLOSURE**

In its summary of proposed permit provisions regarding Closure, NMED states that "the Closure date of WIPP is tied to the Permit Term of ten years and capacities in Permit Part 4, Table 4.1.1." We refute this statement by underscoring that although traditionally NMED has issued permits with a life of 10 years, there is no requirement to continue this practice. We believe that NMED may issue a 10-year permit, but it is not precluded from issuing a permit featuring a WIPP disposal phase duration of less than ten years. Because the disposal period, at the outset of the WIPP, was agreed to last only

twenty-five years, the NMED should issue a permit limiting the disposal phase only up to April 1, 2024.

Additionally, NMED states that, "This proposal change will require the Permittees to make a case for Permit renewal at the end of the Permit term. This Permit term allows the State and the public to require an accurate inventory of waste awaiting clean-up around the United States, including Los Alamos National Laboratory (LANL), for emplacement at WIPP." We find the passage wholly unnecessary and nonsensical. The state of New Mexico has no duty to accommodate DOE and its clean-up of waste-generating sites around the continental US. The state's only responsibility in the DOE-EM effort is to regulate the WIPP and to abide by the current Waste Isolation Pilot Plant Land Withdrawal Act (the Act). The horrific volume of legacy (1943-2020) waste in Technical Areas G & C is well known. Addressing the potential needs of waste generators outside New Mexico falls beyond the scope of the agreement establishing the WIPP. The amount of waste elsewhere in the nation is DOE's worry—not the concern of New Mexico!

In 2018, the State of Utah, following exhaustive yet unproductive negotiations, prepared a lawsuit with the purpose of gaining an injunction against DOE from transiting the state with a shipment of 1 metric ton of surplus plutonium destined for storage at the Nevada National Security Site (NNSS). Before the matter was heard in the federal district court, NNSA completed the movement and emplacement of the shipment. Needless to say, politicians in Nevada felt betrayed and as a result took strong measures to preclude a recurrence. We urge the NMED to disregard any pressure that the DOE may have placed on the State of New Mexico to accommodate the placement of 9.5 metric tons (MT) of plutonium waste that was the subject of a lawsuit won in 2020 by the State of South Carolina against DOE. In that action, the State of South Carolina called for the removal of the plutonium following years of negotiations and litigation against DOE. Under penalty of accumulating fines for failure to act responsibly and within the terms of the court approved settlement, DOE is now desperately trying to coerce New Mexico into accepting the prohibited material, surplus adulterated plutonium. In compliance with a court order, to which New Mexico is not a party, DOE has begun incrementally removing 9.5MT of waste from South Carolina. We emphasize that the State of New Mexico is not obligated to breach the founding agreement of the WIPP, which disallows plutonium waste in bulk and which also disallows any ineligible adulterant in "down blended" plutonium waste into the WIPP. Once again, DOE seeks to violate the existing permit, by its initial, incremental shipment from SRS in December 2022, of a portion of the 9.5MT which a court ordered out of South Carolina. If DOE can not be trusted to act in accordance with the current permit, why should NMED believe DOE will follow the mandates of the new permit under consideration? Before the disposal phase of the WIPP occurs in April 2024 and closure results in the next decade, NMED must redouble its effort to enforce the current permit.

We understand that the WIPP has been operating on a series of administrative extensions to the previous ten-year permit issued by your office in 2010. Now your office is saddled with processing a permit to the US Department of Energy (DOE) for the few

months remaining before the twenty-fifth anniversary of the first admission to the WIPP on March 26, 1999. The original agreement specified the end of the disposal phase of the WIPP's operations; the agreement remains in force and must be affirmed. April 2024, twenty-five years after the initial admission of waste, must be the end of the disposal phase.

The State of New Mexico is not obligated to accommodate the DOI (EPA and BLM), DOE, NNSA, or DOD with regard to WIPP acceptance of waste after April 2024. Neither the issuance in 2021 by the EPA of a five-year permit to the WIPP, nor the wasteful expenditures by DOE of millions of dollars to upgrade the plant and equipment at the WIPP since 2014 should have any influence or bearing on NMED's decision to issue a waste disposal permit, which will expire on April 1, 2024! When Eddy County in 1973, following an extended, withering propaganda blitz by the federal government on southeastern New Mexico, invited the DOE to locate the proposed WIPP near Carlsbad, the state commenced discussions and negotiations that extended for decades. US Senator Peter Domenici, among other prominent state politicians, insisted that the state would only entertain admissions to the WIPP for twenty-five years. In exchange for regional jobs to improve the impoverished county, the federal government chose to site the WIPP near Carlsbad and only accept waste shipments for twenty-five years. The WIPP was to be only the first (a pilot) of several similar waste disposal plants to be established by DOE. Senator Domenici, DOE, and state leadership all agreed that the intent was for DOE to promptly establish a place for priority waste shipments from the Sandia National Laboratories (SNL) and LANL with an urgency for a repository to also take waste from among other sites, but most importantly from waste generated by the closure in 1992 of the infamous Rocky Flats Plant in Colorado. Trusting, gullible, naive, well-meaning New Mexican leaders most likely believed that the legacy waste that had accumulated at the LANL since 1943 would be removed on a priority basis by DOE-EM to the WIPP. At the time New Mexico agreed to accept the WIPP, it must have seemed as if several tangible benefits would accrue to New Mexico and its economy and environment. Regrettably, only a few counties in southeastern New Mexico benefited with some jobs and the remainder of the state was saddled with potential contamination of its air, water, and soil. New Mexico continues to experience an ever-growing mountain of accumulated waste at LANL and an even higher pile of broken promises from the federal government. Los Alamos County received a gold mine in per capita income, while the remainder of the state got a played-out shaft!

The WIPP in New Mexico provided the federal government time to construct other repositories throughout the continental United States. For fifty years, the federal government has acted in bad faith and failed to find alternate sites, much less construct other repositories. Construction of the WIPP took twenty years (1979-1999). DOE was on notice, throughout the construction, that time was of the essence to start building at least one alternate site. DOE's treachery continues; it has failed to locate an alternate site. Now DOE comes to New Mexico with a bold provision in its permit application to extend the life of the WIPP indefinitely. The Hazardous Waste Bureau (the Bureau) must stand up to the federal government by including in the final permit a deadline of April 1, 2024, for admissions into the WIPP, followed promptly by commencement of the ten-

year closure phase and ultimate decommissioning of WIPP. New Mexico has been a military colony since 1846. It must not accept further exploitation, occupation, and colonization by the warmongers in Congress, the military-industrial complex, and the federal executive departments.

## **#2 PERMIT REVOCATION**

The short-term permit issued by the NMED must clearly state that when the threshold volume limit of waste (6.2 million cubic feet of waste) is admitted to the WIPP, as provided for in the Act, or the twenty-fifth anniversary of accepting waste is reached, the closure phase of the permit commences. When the volume limit is exceeded or April 1, 2024, arrives, whichever occurs first, the waste disposal phase of the permit ends. NMED must be consistent with regard to the term of the WIPP permit. The original permit specified twenty-five years for the disposal phase of the permit. The 2010 permit was silent on extension or the issue of additional panels. Only after the 2014 disaster at the WIPP, did DOE become insistent and demanding, claiming the necessity of adding more panels and extending the disposal phase indefinitely. DOE's crisis should not become the state's problem. We insist on a date certain for the end of the disposal phase.

Because the waste is shipped in containers, typically holding closed barrels, drums, or boxes, the outside dimensions of the container will be the basis for calculating the cubic feet of material proffered for admission. No allowance for "head space" or other voids in the containers should be allowed to corrupt the calculations of volume consumed by shipments. The new permit must spell out the provisions regarding emplacement calculations. The exterior dimensions of the containers should be considered for calculations of gross volume stored and applied toward the statutory 6.2 million cubic feet WIPP limit.

We understand that the current Permit does not contain descriptions of disposal rooms dimensions in precise terms. The Permit describes the 13' high X 30' wide X 300' long dimensions using the general terms "nominal" or "approximate" because the Permit anticipated that disposal rooms could not be held to those exact specifications due to the nature of the geology. In retrospect this omission was ill-advised and subsequently exploited by DOE. Additional basis for immediate revocation should be the unauthorized expansion of the subterranean areas of the WIPP. In recent years, the DOE has boldly taken initiative to begin mining panels not authorized, and it has raised the interior ceiling for panel 8 to a height of 16 feet when only permitted for a ceiling height of 13 feet. We understand that over our objection, NMED approved a permit modification to allow the 16-foot ceiling height for panel 8. We trust that only panel 8 was affected by the specification deviation. We urge the Bureau to limit all future panels to the original 13-foot ceiling height limit until the new permit is issued. We consider it imperative that the Bureau be specific in its specification descriptions. Additionally, we consider civil administrative fines inappropriate sanctions of the federal government or its contractors! When egregious violations occur, the Bureau should entertain assessing short periods of permit suspension as a more fitting consequence.

Further, the Bureau must strengthen the provisions regarding prompt notification of the Bureau of accidents, leaks, spills, or other irregularities. Failure to immediately notify the Bureau and the public of incidents, even those irregularities resolved on the spot by WIPP staff, should result in revocation. The Bureau should not approve any future requests for extension of storage time for contact-handled (CH) shipping packing in storage in the parking area unit, as was done in November 2022; such extensions should not be necessary and should not be entertained by the Bureau. The Nuclear Regulatory Commission (NRC) should be policing in-transit shipments, expiration of transportation permits, and expiration of shipping containers certifications, not the Bureau. The US Department of Transportation (DOT) should be enforcing transportation safety laws, not the State of New Mexico. Additionally, it appears that there is an overall timidity for the State of New Mexico to refer violations of federal law to federal regulator and enforcement agencies. It appears to us that the aura of nuclear transportation and handling has intimidated the state into passivity. New Mexico must stop accommodating and facilitating matters outside its jurisdiction. The federal government must be made to step up to resolve problems and to deal with errant contractors when transportation problems arise. The permit issued by the Bureau should clearly spell out the responsibilities and consequences that apply to the permitted parties and their agents. The current policy of not posting shipment arrival data that the public can access simultaneously with the Bureau's notification must be required. The public's right to know the status of waste arrivals and processing must be acknowledged and strengthened in the permit. The current policy of delaying notification to the public for fourteen days after shipment arrivals must be stopped.

*Note:* The issue of transporting so-called down blended plutonium will be address elsewhere in this comment.

### **#3 PRIORITIZATION AND RISK REDUCTION OF NEW MEXICO WASTE**

NMED is adding a new Permit section to require the prioritization of waste from New Mexico generator/storage sites emplacement at WIPP as measured on a volumetric basis against the Act's capacity limit.

We strongly support this initiative. We note that the DOE-EM announced in its weekly bulletin of January 21, 2022, that during the period October 1, 2022, through December 31, 2022, shipments to the WIPP from the Idaho National Laboratory (INL) were 55, LANL were 12, and SRS was 1. This activity certainly is not in keeping with the spirit and intent of the understanding between New Mexico and the federal government when the state agreed to host the WIPP. Without strong new language in the new permit, we may expect this outrageous behavior to continue or worsen, as it is apparent that DOE will no doubt favor other generators over LANL and DOE will not make a good faith effort to remove legacy waste from LANL, but will prioritize shipping legacy waste over newly generated waste (2020 and later).

We understand that NMED regulate both WIPP and LANL. Additionally, we understand that the current WIPP permit does not contain a priority for legacy (1943-2020) waste removal from LANL and emplacement into the WIPP. Nevertheless, NMED, through its relationship with the governor and the Radioactive Waste Consultation Task Force must pressure DOE and NNSA to act more responsibly to expedite and accelerate the clean-up of Areas G and C at the LANL. DOE is under federal court order to clean up SRS and INL; NMED absent a similar order should use the new permit to achieve at least the clean-up in earnest of LANL. The fact of the matter is that LANL and WIPP are inextricably linked, and regulation, oversight, and permitting of one entity necessarily affects the other.

The Bureau must add a new permit section to require the prioritization of waste from New Mexico generator/storage sites for emplacement at WIPP. WIPP must be barred from accepting from foreign (non-New Mexican) shipments exceeding, in any given calendar quarter, the volume of waste deposited by SNL and LANL combined. Legacy waste should be defined in the permit as waste generated from 1943 to 2020. The WIPP must be prohibited from accepting shipments from LANL that contain more than 30% newly generated waste, e.g., waste that was generated since 2020. With only months remaining in the deposit phase of the WIPP, the state must assure that as much legacy waste is removed from its two national labs prior to either April 2024 or the deposit of 6.2 million cubic feet of waste. DOE must be required to submit quarterly reports to NMED that reflect separately the amounts of legacy waste and newly generated waste deposited by LANL into the WIPP.

Additionally, the "Volume of Record" (VOR) calculations by the DOE must be ignored! NMED must insist on TRU volumes as the real capacity determined, not DOE's self-serving VOR. Further, we note that, using the same calculations, assumptions, and forecasts that the National Academy of Science relied upon, using DOE's VOR, the WIPP will be 8% oversubscribed. Regardless of any shenanigans pulled by Congress or DOE/NNSA, the Bureau must adhere to and enforce the original terms of the establishing agreement and the Act, by revoking the permit, if more than 6.2 million cubic feet of waste containers, whether totally full of waste or not, are admitted by DOE contractors to the WIPP.

*Note:* The issue of the acceptance of so-called down blended plutonium will be addressed elsewhere in this comment.

#### **#4 SUSPENSION OF WASTE SHIPMENTS**

The NMED is proposing to clearly define its ability to suspend waste shipments to the WIPP facility if there is allegation or evidence of a threat to human health or the environment or any permit noncompliance. Further, NMED is highlighting its right to suspend waste shipments to the WIPP facility associated with any allegations of Waste Analysis Plan (WAP) noncompliance as well.

We support this initiative and urge NMED to further make clear to the parties that any suspension will not toll the closure date of April 1, 2024. The failure of the DOE to supervise its contractor in 2014 and a separate incident involving a vehicle fire in the subterranean area in 2014, resulted in the closure of the WIPP for almost three years. Now, DOE is attempting to bully NMED into extending the closure date of the WIPP indefinitely. DOE makes the specious argument that the 2014 catastrophic shutdown is a basis for accommodation. The covenant between the federal government and the people of New Mexico entered into when the WIPP was agreed to by the state has no provision for extensions or exceptions. When the first permit was issued, the topic of extending the disposal phase or adding additional space was not mentioned. When the second permit was issued in 2010, the topic was not surfaced. Only after the 2014 incidents was DOE vehement and insistent about enlarging the space, extending the life, changing the calculation of waste, and redefining the criteria for waste and acting as if down blended plutonium was historically and routinely allowed in the WIPP. We reemphasize that the twenty-five year operational life of the WIPP was a condition of siting the WIPP in New Mexico. Suspensions by NMED under the proposed permit provision should not be construed to grant any extension or allow of additional time for the WIPP disposal phase. This permit provision must be crystal clear in the permit language.

With regard to the WAP and the WIPP-WAC, NMED must perpetuate the stance established when the WIPP opened in 1999. Down blended plutonium, whether surplus or not, is not allowed in the WIPP, and if admitted by the DOE contractor will be a basis for immediate suspension of the operational permit issued by NMED.

## **#5 ROOT CAUSE ANALYSIS**

NMED proposes to require the Permittees to perform a root cause analysis if there are suspected or actual issues related to shipping containers or when otherwise requested by NMED.

We support this proposal but request NMED add a requirement that prior to the commencement of the analysis, a report of incident or suspected non-compliance be made to the Bureau. Following the analysis, if it is safe to proceed which the administrative handling and processing of the shipping container and its contents, the NMED and DOE staff jointly should make the determination that its is safe to proceed with the deposit of the waste into the WIPP. Absent a requirement in the permit, we do not trust DOE to either promptly report a suspected unsafe condition, conduct a causal analysis, or inform NMED of the findings of the analysis.

## **#6 SAFE TRANSPORT OF TRU MIXED WASTE**

NMED is adding a new section requiring compliance with transportation guidance to ensure the safe transport of waste through New Mexico.

We are aghast that NMED is only now proposing to add a new section requiring compliance with transportation guidance to ensure the safe transport of waste through

New Mexico. We assume that other state agencies have had such an oversight responsibility and jurisdiction. We further assume that refused shipments departing the WIPP are the subject of this new section. We do not understand how the Permittees can be held responsible to enforce requirements on shippers when they are normally only the recipients of the shipments. It seems prudent to require the Permittees to promptly report to other state officials if shipments arrive at the WIPP not in compliance with applicable transportation standards and requirements. Nevertheless, it seems problematic to place a reporting or enforcement burden on the DOE for matters under the purview of the DOT. Considering the ultra hazardous nature of the substances traveling to the WIPP, we urge the state to concurrently inform US DOT of any perceived transportation irregularities. Reports of potential violations of DOE's contract haulers need to be matters of official record. The state must not pander to DOE and must insist on compliant conduct in all respects.

## **#7 SITING ANOTHER REPOSITORY**

NMED proposes to add a new section to require the submittal of an annual report detailing the DOE's progress toward siting another repository for TRU waste in a state other than New Mexico.

We can not support such a provision, as the NMED is not a federal entity and it has no jurisdiction over the conduct or decisions of the US executive branch. In our view, the best way to influence the federal government in this matter is to close the WIPP pursuant to the original establishment agreement of the WIPP. Twenty-five years remains twenty-five years: April 1, 2024!

## **#8 PUBLIC PARTICIPATION**

NMED is updating the requirements of the WIPP Community Relations Plan to include quarterly public forums that provide notice and allow ample opportunity for public engagement on permit and non-permit related issues, as well as a return of pre-submittal meetings for Class 2 and 3 permit modification requests (PMRs). In addition, the permittees must invite members of the New Mexico Radioactive Waste Consultation Task Force to each quarterly public forum.

We regret that in the past decade, the Radioactive Waste Consultation Task Force has been dormant, ineffective, and non-engaging. We can only hope that if invited, the Task Force members will engage and conduct meaningful dialogue on all DOE activities within the state that involve radioactive waste. We support these proposals, yet we point out that they will be moot if the NMED closes the WIPP for admissions on April 1, 2024! The state has no obligation to submit to further exploitation by the rogue, exploitive agencies of the federal government.

Additionally, NMED must assure that there is adequate transparency for the public to stay informed about operations of the WIPP. One example of a traditional lack of transparency is the current practice of WIPP informing NMED contemporaneously of



shipment arrivals, yet public notification of arrivals and character of waste shipment at the WIPP are delayed by 14 days.

## **#9 MONITORING OF DRILLING ACTIVITIES**

NMED is requiring that a summary of the results of the monthly surveillance of oil and gas production wells, and now saltwater disposal wells, within a one-mile perimeter outside the Land Withdrawal Act boundary be included as a new component of the Annual Geotechnical Analysis Report.

We support this provision, but would like to see the one-mile element extended to 3 or 5 miles. Fracking in the Permian Basin is so prevalent that seismic consequences which may affect the subterranean passages of the WIPP are more likely. Additionally, NMED or the state's Mineral Office should take an enhanced interest in learning the chemical composition of fracking solutions or slurries that drillers are injecting within 3 to 5 miles of the WIPP perimeter. With the newly disclosed chemical composition of the fracking slurry, the state should examine the potential interactivity of the injected solvents with the natural salt deposits that surround the WIPP. The integrity of the subterranean storage spaces at the WIPP is dependent on the bedded salt remaining free of fresh flowing waste and a geologically stable environment.

## **#10 GENERATOR SITE TECHNICAL REVIEWS**

NMED is establishing a biennial requirement for Generator Site Technical Reviews (GSTRs) and requiring that such reviews are tracked to completion with issues resolved and the results summarized in final audit reports for individual generator/storage sites shipping waste to WIPP. GSTR final reports, which must provide evidence that all issues have been closed out, must be included with final audit report submittals in order for NMED to approve them. A GSTR item was added to the C6 Checklist for audits.

We do not understand the need for this provision. We do not believe that NMED has any enforcement jurisdiction over generators located outside the state of New Mexico. We would prefer that DOE and NNSA be proactively responsible for this audit and enforcement protocol rather than the state expend assets toward this effort. The proposed requirement will become moot on April 1, 2024, when the disposal phase ends.

## **#11 PANELS 11 AND 12**

Since the Permit Parts are the responsibility of the permitting agency, NMED has added rows for Panels 11 and 12 in Permit Part 4, Table 4.1.1.

We understand Panels 11 and 12 are the so-called replacement panels for those lost in the 2014 catastrophe. NMED must explicitly delineate the dimensions and specifications of any mined structures to preclude DOE taking liberties and intentionally making unauthorized deviations from approved construction plans. Absent a permit modifi-

cation granted for Panel 8, we assume that the 13-foot-high ceiling limitation described in the current Permit is the standard dimension applicable to Panels 11 and 12.

#### **#12 TABLES COMBINED IN PART 4**

To consolidate the information across panels, two separate pairs of tables in Permit Part 4 have been combined to show Volatile Organic Monitoring Compound (VOC) Room-Based Limits and VOC Action Levels for Disposal Room Monitoring across three room height dimensions of Hazardous Waste Disposal Units (HWDUs)(for Panels 1-7, Panel 8, and Panels 11 and 12).

We support this consolidation.

#### **#13 AISLE SPACE**

NMED is adding language to address issues concerning aisle space in the Waste Handling Building.

We support this additional language.

#### **#14 WIPP MISSION**

This is the most important aspect of the pending permit. We hold that the original mission of the WIPP, as understood by Congress when it authorized WIPP in 1979, is the only mission that NMED should consider when writing this final permit covering the disposal phases of WIPP operations. When the Land Withdrawal Act was enacted in 1992, Congress outlined the materials allowed in the WIPP (defense generated TRU—trace amounts of materials, tools, parts, etc., contaminated with trace amounts of uranium, plutonium, and other radiological, chemical, and hazardous substances—with no mention of surplus or down blended plutonium), the volume limit of the storage area (6.2 million cubic feet), and the length of time the WIPP would accept waste (25 years). In 1998, the EPA certified the WIPP for safe, long-term disposal of TRU wastes. The EPA has issued a succession of 5-year permits with those same criteria in mind. Now come the DOE and NNSA with designs and insistence that the federal and state regulators accept a new mission for the WIPP and change all the operational ground rules and assumptions, accordingly. We reject in total the DOE's unreasonable and inappropriate demands upon the State of New Mexico and its people and environment.

NMED is retaining Permit language related to the mission of WIPP as a pilot plant for the permanent disposal of TRU waste, as well as language pertaining to the history of the Permit and post-closure activities. NMED is also introducing language relevant to repository footprint fencing during the post-closure phase.

NMED's proposal is appropriate, yet woefully inadequate. We understand that the Land Withdrawal Act is a foundational document governing the WIPP, nevertheless, DOE is clearly seeking to expand the mission of the WIPP to the detriment of the state.

The multi-faceted expansion of the WIPP mission by DOE in league with NNSA is contrary to existing federal and state laws, the WIPP Permit, the New Mexico-DOE Consultation and Cooperation Agreement, and decades of promises made to the public—a social contract.

NMED must add language to the permit that clearly states and puts the federal government on notice that the WIPP, as agreed upon in 1979, will serve for twenty-five years (commencing March 26, 1999) as a pilot plant or until 6.2 million cubic tons of TRU waste is deposited, whichever comes first. The WIPP will not become a repository in perpetuity; it will accept only TRU and mixed-TRU waste, but not down blended plutonium masquerading as TRU; and it will not exceed its current footprint.

Further, NMED must add language to clarify that TRU waste that is acceptable to the WIPP is trace amounts of waste found on contaminated objects, materials, tools, etc., and that so-called down blended plutonium is not admissible to the WIPP. Plutonium oxide as a stand alone substance, in any strength, has never been legally admissible to the WIPP. Down blended plutonium is not trace amounts of plutonium and therefore it is not TRU and is ineligible for storage in the WIPP.

During the earlier discussions and negotiations between the federal government and the State of New Mexico regarding siting of the WIPP, US Senator Peter Domenici explicitly stated that a condition of accepting the pilot plant was an absolute prohibition of down blended plutonium into the WIPP. Congress in 1992, prior to the existence of "surplus plutonium," established the legal regulatory limits and definitions regarding the WIPP. The term "surplus plutonium" did not appear in the Land Withdrawal Act because the term was not coined until 1994, when the initial batch of waste was characterized.

The materials acceptable to the WIPP were delineated in 1992. When Congress enacted legislation in 1994 governing the WIPP, there was no declared surplus plutonium. Not until later years did the President declare plutonium surplus.

All parties, federal and non-federal are required to follow the mandates set forth in The Waste Isolation Pilot Plant Land Withdrawal Act, various applicable federal and state regulations and statutes, the Consultation and Cooperation Agreement, and the decisions of the federal District Court with respect to WIPP management and operations. As you are aware, the Act spells out the condition when the WIPP must cease accepting waste shipments.

## **#15 PANEL DESCRIPTIONS**

NMED is providing clarifying language to describe panels, including Panels 9-12 and to indicate how certain panels were closed.

Prior to providing clarifying language, NMED needs to sanction DOE for deviating from previous panel authorized panel specifications. DOE must be punished for begin-

ning work on panels not authorized in 2021 and for raising the ceiling heights from 13 to 16 feet in those non permitted initiatives. As recently as January 21, 2022, DOE announced in its Weekly DOE-EM Bulletin that it was constructing new panel with 16-foot ceilings. New clarifying language and future admonitions will be of no avail if DOE can continue to take noncompliant actions in spite of issued NMED mandates and instructions.

## **#16 CHEMICAL COMPATIBILITY REQUIREMENTS**

The chemical compatibility requirements in Permit Part 2 are the same as the requirements in the DOE Waste Acceptance Criteria. The requirements are being referenced here when discussing hazardous waste designations, or the disposal of derived waste and equipment at final facility closure. NMED is referencing these requirements to ensure incompatible items are not disposed in the underground.

We support inclusion of these requirements. We salute the Bureau for its forward thinking in planning for the closure phase of WIPP operations, as closure is on the horizon and should commence in April 2024, twenty-five years after the first admission to the WIPP.

## **#17 LESSONS LEARNED**

NMED is retaining Permit language associated with sharing of information across generator/storage sites and believes "lessons learned" across the DOE complex should be regularly disseminated.

We support this language and recommend that NMED continually remind the parties that enforcement of the permit will be robust and that severe sanctions from the NMED and the Office of the State Attorney General will be meted out for the remaining few months of waste acceptance operations during the disposal phase at the WIPP.

## **#18 PROPOSED WAP CHANGES**

NMED is retaining language related to "waste summary category groups" rather than the suggested Permittees' proposed language of "waste streams" because the current Permit language is more encompassing. NMED is also ready to entertain major or minor WAP-related Permit language changes introduced on the part of the Permittees at this time.

We support this language retention and reiterate that the policy of "dilute and dispose" when applied to plutonium is unacceptable for WIPP admission standards. The new permit must contain language that specifically bars plutonium oxide in any strength that is non-trace amounts of plutonium (to include so-called surplus plutonium from any site, or vitrified or stranded plutonium from the failed MOX Project at SRS)

*Note (1):* The surplus plutonium inventory in the United States totals 61.5MT. No matter where located or in what configuration the plutonium exists, the subject of the ultimate disposition of the 61.5MT should be decided as a single issue. DOE is attempting to incrementally ship and rid itself of plutonium by claiming past decisions issued under cover of the National Environmental Protection Act (NEPA) for 6MT at SRS from the MOX Fuel Fabrication Plant (plutonium-uranium mixed oxide) project, 7.1MT non-pit production plutonium at the Pantex Plant, and a separate 34MT from pit production now at Pantex should be handled differently. DOE's continued bad faith is illustrated by shipping MOX project plutonium while the public comment period is open for the 43.1MT addressed in the Draft Environmental Impact Statement on the Surplus Disposition Program (SPDP EIS)(DOE EIS-0549). If NMED does not act soon to block the admission of 13.1MT of diluted plutonium the DOE has public stated it intends to ship to the WIPP, prior to decision on the official DOE Surplus Plutonium EIS, the die will be casted for the entire 61.5MT to enter the WIPP.

The DEIS for surplus plutonium is the fifth in a series of draft and final environmental impact statements regarding what to do with surplus plutonium. In none of the first four EISs was WIPP considered a suitable site for any of the plutonium. The DEIS states that the 6 MT of plutonium could amount to 17,000 cubic meters of waste. That would approximately double the amount of SRS waste to be emplaced at WIPP. While the DSEIS states that amount could fill WIPP, it might require adding additional panels or displacing CH waste from LANL or other sites that are in the WIPP Inventory. The DSIES states that WIPP does not have the capacity for all 13.1MT of plutonium. Furthermore, plutonium oxide in pipe overpack containers has never come to WIPP, assuming that the December 2022 shipment from SRS was not packed in pipes, and may contain materials, such as "stardust," that are not permitted at WIPP.

DOE's practice of seeking approval for separate segments of the plutonium waste, rather than for all of the waste at once, was intended to protect decisions already made without public input. DOE decided to do this before they did any of the analysis. All these EISs are to give legal cover and justify decisions already made. We believe that using WIPP as the disposal site for plutonium, even after its dilution to allegedly meet the requirements of TRU waste, marks an undue expansion of WIPP's mission beyond what the people of New Mexico agreed to when the facility was sited in their state.

*Note (2):* DOE's August 2020 agreement to remove surplus plutonium from the State of South Carolina should be of no consequence or interest to the State of New Mexico and therefore not grounds for making an exception to the bar of surplus plutonium into the WIPP.

*Note (3):* Although not specifically a topic for discussion in relation to the pending permit, we believe that plutonium residue from the terminated MOX plutonium, which DOE has safely stored on site since 2018, and which was shipped in mid-December 2022 from SRS, should be ordered removed from the WIPP. There simply must be conse-

quences for rogue behavior by DOE and NNSA, if the state is to enjoy compliance with any new permits.

*Note (4):* With regard to down blended plutonium, the NMED should also base its bar on WIPP admission based on the fact that NNSA refuses to divulge the chemical composition of the adulterant, commonly referred to as “angel dust, stardust, or pixie dust,” that is added to the plutonium at SRS. NMED can not make a scientific determination on the eligibility of this substance for WIPP admission if it does not know this relevant fact.

Finally, we believe that the new permit must specifically restate the prohibition of both down blended plutonium and the adulterant (of undisclosed chemical make-up) for emplacement in the WIPP, as well as any surplus or stranded plutonium. Further, the permit must feature language that heavily discourages the shipment of waste stemming from pit production at LANL or SRS. Legacy waste located at the state’s two national laboratories must have priority for shipment to the WIPP during the impending end of the disposal phase on April 1, 2024.

## **#19 AUDIT CAUCUS**

NMED has confirmed its ability to observe the daily audit team caucuses as part of its observation of the audit process in order to approve final audit reports.

We recommend that this provision be strengthened by changing the language to read “in order to reject, disapprove, or approve final audit reports.”

## **#20 RETAINING ANNUAL AUDITS**

NMED is retaining Permit language referencing the need for annual recertification audits for generator/storage sites. NMED is also not ready to entertain major or minor WAP-related Permit language changes introduced on the part of the Permittees at this time.

We strongly support this decision. The notion of somehow facilitating the admissibility of down blended plutonium, whether surplus or not, through any changes in WAP-related Permit language should be totally unacceptable and not entertained.

## **#21 PROPOSED C6 CHECKLIST WASTE ANALYSIS PLAN CHANGES**

NMED is retaining Permit language for WAP Requirement 42 of the WAP C6 checklist pertaining to the data generation level data review process. NMED also is not ready to entertain major or minor WAP-related Permit language changes introduced on the part of the Permittees at this time.

We support NMED’s stance on this issue. It is too late for adjustments in the list of materials acceptable for emplacement in the WIPP. We are more than 23 years into the agreed upon 25-year term of the disposal phase of WIPP operations.

## **#22 PEAK GROUND ACCELERATION**

NMED is adding language to clarify that the term “g” refers to peak ground acceleration for a design basis earthquake.

Earthquakes deriving from increased use of the hydraulic fracturing (“fracking”) of shale oil/gas strata in the Permian Basin Region located near the WIPP pose a current problem that is expected to worsen as drilling activity increases through the short remaining life of the WIPP. NMED is prudent to strengthen all provisions in the permit to anticipate seismic threats to the integrity of the deposited waste and the arrived, yet unprocessed waste shipments. Because DOE and NNSA have repeatedly demonstrated at LANL, as evidenced most recently by the Defense Nuclear Facilities Safety Board’s (DNFSB) site visit to LANL in mid-November 2021, which revealed that OSHA and DNFSB standards had not been adhered to. We fear that this lack of adherence will continue and the standards may be sacrificed for the sake of expediency as plutonium pit production accelerates. NMED must include in the permit strong standards and enforcement mechanisms for adequate seismic safety precautions.

## **#23 LABORATORY PERFORMANCE EVALUATION PLAN**

NMED is retaining certain Permit language and introducing other language related to the Laboratory Performance Evaluation Plan (LPEP) which culminated in a proficiency testing plan ensuring the Permittees’ laboratory was able to perform analysis based on parts per billion.

We support this approach.

## **#24 CLOSURE REPORT**

NMED is clarifying the need to submit a Closure Report when a HWDU is closed.

We support this initiative.

## **#25 CLARIFICATIONS**

NMED is adding and deleting language for clarification purposes. In some cases, duplicative language has been removed. References have also been updated and, in other instances, regulations has been correctly referenced.

When dealing with the DOE and NNSA, specificity is ultra important. Similarly, setting forth the consequences and potential enforcement sanctions for non-compliance is especially important. Historically, both Permittees have frequently taken adverse advantage of permit provisions that were both clearly and not clearly spelled out, even

when the intent of the permit language was obvious, yet inconvenient, for the Permittees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John E. Wilks, III". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke extending to the right.

John E. Wilks, III  
Vice President  
Chapter #63 (ABQ) Veterans For Peace