

My wife and I live in the New Mexico community of Eldorado next to Route 285 (near the intersection of I-25 and Route 285) which is part of the transportation route for deliveries to WIPP. I support the work of the 285 Alliance and StopForever WIPP (but I do not represent them). Please consider the following comments regarding the New Mexico Environment Department's draft permit for the WIPP permit renewal:

1. Department of Energy's Lack of Credibility and its Implications for the WIPP Permit Renewal

The Department of Energy (DOE) and the National Nuclear Security Administration (NNSA) have lost their credibility with the people of New Mexico. When WIPP was first proposed, DOE and NNSA made five important promises to New Mexicans:

1. WIPP is a "pilot plant."
2. DOE and NNSA will develop additional sites in other states (New Mexico would not be the only disposal site).
3. WIPP will handle only wastes contaminated with radioactive elements such as gloves, clothing, tools, sludges and similar items.
4. WIPP will handle "legacy wastes" associated with the historical development of nuclear weapons.
5. WIPP will cease accepting wastes in 2024.

Now, DOE and NNSA are breaking those promises, and they are doing it in a piecemeal fashion that hides their true and complete intentions. Their actual intentions are not made explicit in their permit renewal application, but those intentions are made increasingly clear in their actions or omissions. Their intent to have New Mexico continue as the only disposal site (not a pilot plant) is made clear by their failure to pursue any obvious plans to develop a second site. Their intent to expand the types of wastes to be accepted at WIPP is becoming increasingly clear by the environmental reviews they are conducting regarding the disposal of surplus plutonium from decommissioned nuclear weapons and the still-to-be-conducted environmental reviews that should be conducted for newly announced plans to develop additional pits for nuclear weapons. All of these plans, in turn, align with the change they are proposing to extend the closure date for WIPP.

DOE and NNSA have deceived New Mexicans. We have no reason to believe the promises they are making now – or the additional promises they will likely be making in the future. **As a result, the Environment Department must exercise extreme care and skepticism as it considers the WIPP renewal permit and the changes to the existing permit proposed by DOE and NNSA. A consequence must be made explicit for violations of permit conditions and promises.**

2. The current RCRA permit should not be renewed.

WIPP was proposed as a pilot plant with similar repositories to be developed in other states. The need for the disposal of transuranic waste is a national problem, not solely New Mexico's problem. New Mexico residents should not have to bear 100 percent of the burden of this problem and 100 percent of the risk of DOE's failure to develop sites in other states. The renewal of the WIPP permit will relieve ANY incentive that DOE will have to find other sites.

The denial of the renewal will provide DOE with the proper incentive that is fair to New Mexicans to find such sites.

This section should not be changed:

G-1(d)(2) Schedule for Final Facility Closure.

The Disposal Phase for the WIPP facility is expected to require a period of 25 years beginning with the first receipt of TRU waste at the WIPP facility and followed by a period ranging from 7 to 10 years for decontamination, decommissioning, and final closure. The Disposal Phase may therefore extend until 2024, and the latest expected year of final closure of the WIPP facility (i.e., date of final closure certification) would be 2034. . . .

3. If the current permit is renewed, the closure date for accepting wastes at WIPP cannot be extended indefinitely.

Under the federal Resource Conservation and Recovery Act (42 USC 6925(c)(3) and its implementing regulations (40 CFR 270.50 and the New Mexico Environment Department’s adoption of the federal rules (NMAC 20.4.1.900), the maximum term for a hazardous waste permit is ten years. The ten-year term is included in the current permit (section 1.7.2) and in the Draft Permit, but the deletion of the current language in G1(d)(2) providing for specific dates for closure is inconsistent with the ten-year life of the permit. The current language (which is consistent with DOE’s initially promised term) is dramatically inconsistent with the newly announced plans to continue disposals through 2080. **The newly announced plans should be rejected.**

If the permit is not being modified to permit additional waste streams (see below), there is no reason to modify the closure sections of the permit to provide an indefinite term (certainly not through 2080). **The permit should continue to specify an end date for disposal and a further end date for final closure. The end date for disposal should be extended at most for the time lost due to the 2014 container explosion.**

Deleting the end dates for disposal and closure eliminates any incentives for prudent management and disposal practices.

4. If the current permit is renewed, the Draft Permit’s revocation language regarding amendments to the Land Withdrawal Act should be retained and strengthened.

Section 1.3.1 of the Draft Permit states “This permit shall be revoked within 30 calendar days if the Land Withdrawal Act (Pub. L. 102-579, as amended) volumetric disposal limit for TRU waste of 6.2 million cubic feet at the WIPP facility is increased or otherwise changed by the U.S. Congress.” This language is, of course, consistent with the original promises on which New Mexico’s acceptance of WIPP was based. **This language should, at a minimum, be retained. It should also be strengthened to provide for revocation if the Act is amended to expand the scope or types of waste to be disposed of at the WIPP facility:**

1.3.1. Permit Modification, Suspension, and Revocation

. . .

This permit shall be revoked within 30 calendar days if the Land Withdrawal Act (Pub. L. 102-579, as amended) volumetric disposal limit for TRU waste of 6.2 million cubic feet at the WIPP facility or the scope or types of wastes to be disposed of at the WIPP facility are increased or otherwise changed by the U.S. Congress.

5. If the current permit is renewed, NMED should retain and strengthen its proposed condition requiring the annual reporting of DOE progress on siting a further transuranic waste repository.

WIPP was proposed by DOE as a “pilot plant” with the representation that DOE would proceed with the siting of similar plants in other states. Based upon DOE’s apparent failure to proceed with planning for a further site, NMED’s draft reporting requirement (below) is therefore reasonable. It would also be reasonable to provide for a revocation of the New Mexico permit if DOE fails to make a genuine effort to pursue a further site. Text should be added as shown below:

2.14.3 Repository Siting Annual Report. The Department of Energy (DOE) shall submit an annual report summarizing its progress toward siting another geologic repository for transuranic waste in a state other than New Mexico. The annual report shall summarize the steps the DOE has taken toward siting such a geologic repository in another state and the report shall include documentation supporting the summary. Such documentation may include: budget appropriation requests; land acquisition(s); state and public engagement activities; feasibility studies; and design, construction, and operation plans. **This permit shall be revoked within 30 calendar days if, within five years after the issuance of this permit renewal, DOE fails to obtain a permit to site another geologic repository for transuranic waste in a state other than New Mexico.**

6. If the current permit is renewed, DOE’s request to change the permitted waste streams for disposal at WIPP at its discretion should be denied.

The waste streams intended for disposal at WIPP are identified in Section A-5 and Attachment C. DOE proposes to delete the specification of permitted waste streams to give itself more discretion to expand the scope of materials to be disposed at WIPP and to reduce the NMED’s authority. **DOE’s proposals should be denied.**

7. If the current permit is renewed, the quantity of waste to be disposed of at WIPP should be returned to the originally promised definition of the size of the containers.

The language of the current and draft permits (as the current permit was previously revised) measures the quantity of permitted waste as the internal volume of the containers disposed of at WIPP. That definition is contrary to the original intent of the Land Withdrawal Act and the original design of the plant. **The original intent should be adopted:**

1.5.21. TRU Mixed Waste RCRA Volume “TRU Mixed Waste RCRA Volume (TRU Mixed Waste Volume)” means the gross external ~~internal~~ volume of the outermost disposal container of TRU mixed waste pursuant to waste volumes in this Permit. For purposes of this Permit, all TRU waste is managed as though it

were mixed. This volume is tracked and reported by the Permittees relative to the authorized maximum capacities in Permit Part 4, Table 4.1.1.

8. If the current permit is renewed, surplus plutonium from decommissioned nuclear weapons should be added to the list of Prohibited Wastes in Attachment C.

The plan being discussed outside the permit renewal application (but which is the subject of an ongoing DOE environmental impact statement process) anticipates a several thousand-mile transportation route through ten states for the disposal of surplus plutonium generated from decommissioned nuclear weapons with ultimate disposal at WIPP. **The plan is ridiculous and risky and far beyond the scope of materials intended for disposal at WIPP.** That scope is defined in Section A-5 (which DOE proposes to delete) and Attachment C. WIPP is intended for wastes contaminated with radioactive elements. It is not intended for radioactive materials that are cynically transformed into hazardous wastes to be disposed at the only site that DOE has developed.

The plans would also expose my wife and me, along with the entire Eldorado community, to the transportation risk along Route 285 of the plutonium shipments from Amarillo to LANL and then again from LANL to the Savannah River National Laboratory in Georgia. This risk, of course, is in addition to the risks posed to others along that route and the further route from Savannah River to WIPP.

9. Request for Hearing

I request that NMED hold a formal evidentiary hearing with sworn testimony and cross examination, preceded by an ample opportunity for discovery.