



Concerned Citizens for Nuclear Safety  
P. O. Box 31147  
Santa Fe, NM 87594-1147  
505 986-1973  
[www.nuclearactive.org](http://www.nuclearactive.org)

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By email to: [ricardo.maestas@env.nm.gov](mailto:ricardo.maestas@env.nm.gov)

Ricardo Maestas, WIPP Group Staff Manager  
Hazardous Waste Bureau - New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, NM 87505-6303

Re: CCNS Comments and Request for a Public Hearing about the New Mexico Environment Department (NMED) Draft Renewal Hazardous Waste Permit for the Waste Isolation Pilot Plant (WIPP)

Dear Mr. Maestas:

Concerned Citizens for Nuclear Safety (CCNS) provides the following general and specific comments about the NMED draft renewal hazardous waste permit (HWP) for WIPP.

CCNS is a 35-year old non-governmental organization based in Santa Fe, New Mexico. CCNS formed in 1988 to address community concerns about the proposed transportation of transuranic and hazardous waste from Los Alamos National Laboratory (LANL), on St. Francis Drive through Santa Fe, to the yet to open WIPP. Our mission is *to protect all living beings and the environment from the effects of radioactive and other hazardous materials now and in the future.*

We are grateful to NMED for providing translation services in English, Spanish and Vietnamese on its website.

## REQUEST FOR A PUBLIC HEARING

CCNS requests a public hearing on a revised draft renewal HWP, a revised fact sheet, a revised public notice and a revised Public Involvement Plan (PIP). We request revised documents in order to avoid confusion at the public hearing, which has happen in the past when changes were made during negotiations, but there was no formal public notice of the changes. CCNS recommends revised documents be prepared prior to the public hearing to provide notice of the negotiated terms going into the hearing. In that way, resources would be used efficiently and reduce confusion at the hearing.

CCNS requests a public hearing because:

1. CCNS was founded to address community concerns about all aspects of the WIPP program: from transportation, emergency preparedness and response, waste storage, waste characterization, waste disposal, worker training, to enhanced reporting and public access to information.
2. CCNS represents a broad constituency of individuals throughout New Mexico.
3. CCNS objects to portions of the draft renewal permit as described below, with suggested language changes.
4. CCNS proposes to raise issues described below in our written public comments.

## CCNS OBJECTIONS

CCNS objects to the Department of Energy (DOE), National Nuclear Security Administration (NNSA) and Salado Isolation Mining Contractors (SIMCO) (comprised of Bechtel and Los Alamos Technical Associates) (collectively, the Permittees) plans to:

- expand WIPP as the only repository for all the nation's nuclear weapons' waste
- expand WIPP's underground footprint
- expand the volume of waste
- expand waste operations beyond 2024 to at least 2080, or ... forever
- expanding the kind of waste, including powdered surplus plutonium.

CCNS objects to the continuation of use of the Volume of Record ("VOR") and Table 4.4.1. Regardless of the Permittees' expansion plans, it remains true that the

physical size of the outer container drives how much disposal space actually needs to be excavated. The Permittees and NMED must withdraw the VOR conditions from the draft renewal permit.

CCNS objects to the proposed Panels 11 and 12 for a number of reasons. The geology of the western underground area has not been fully explored. This is where DOE plans to mine Panels 11 and 12. As described in the April 20, 2021 Environmental Protection Agency (EPA) letter to DOE, there are ongoing concerns, including the possible rulemaking for Panels 11 and 12. [AR 210417] For administrative efficiency, the Permittees and NMED must withdraw Panels 11 and 12 from the draft renewal permit.

CCNS objects to the proposal to “dilute and dispose” of “surplus” powdered plutonium in WIPP. As Senator Pete V. Domenici said in 2002, “I want to ensure that high level wastes can never be simply diluted in order to comply with criteria for WIPP disposal.” CCNS concurs with Senator Domenici.

CCNS objects to “dilute and dispose” of “surplus” powdered plutonium processing at Los Alamos National Laboratory (LANL). This process will generate more transuranic waste destined for a WIPP scheduled to close on March 26, 2024. LANL plans to leave over 200,000 cubic yards of waste buried in unlined pits, shafts and trenches dug into the volcanic tuff, above the regional drinking water aquifer, in a RCRA designated seismic zone.

CCNS urges full public access to the WIPP Waste Information System (WWIS). [§2.3.1.7] If the Permittees continue to plan to keep WIPP open until at least 2080, then full public access to this information is more important than ever.

CCNS object to the DOE/NNSA’s continual denial for public access to the Central Internet Database (CID). If the Permittees continue to plan to keep WIPP open until at least 2080, then public access to this information is more important than ever.

CCNS objects to the Permittees’ proposed removal of the word “all” throughout the draft renewal permit.

CCNS opposes the Permittees’ attempts to remove specificity in the draft renewal permit. For example, in Attachment A, p. 4, Permittees propose to move descriptions of Waste Summary Categories to Attachment C, without providing a specific reference. Attachment C is one of the largest attachments in the permit.

Without a reference, the public will be on a wild goose chase to find the Waste Summary Categories in Attachment C. CCNS urges NMED to keep the Waste Category Summaries where they are currently located in Attachment A.

Similarly, CCNS objects to the deletion of key descriptions of *CH TRU Mixed Waste Containers*, §A1-1b(1) in Attachment A1. If the Permittees' plan to keep WIPP open until at least 2080, then full public access to this information is more important now than ever.

CCNS opposes the lack of formal publication requirements for all deed recordations and restrictions in the draft renewal permit. For example, §7.4 *Notices and Certifications*. This section must be rewritten to include statements/warnings about the danger of the radioactive and hazardous wastes, entering the site, exploring the site for natural resources, etc.

CCNS objects to the use of the turquoise/red and black ink to highlight suggested language changes in the draft renewal permit because it is difficult to read them on a paper copy. We specifically object to the use of turquoise on the Permittees' suggested changes in red.

CCNS object to the proposed removal of the listing of the Permit Attachments, Figures, Tables and References at the end of each Permit Part. We find the lists to be useful tools as we move between the permit Parts, Attachments and References.

#### **CCNS SUPPORTS:**

WIPP closure after 25 years of operation on March 26, 2024, with a ten-year closure period and at least a 30-year post-closure period.

The removal of the VOR and Panels 11 and 12 from the draft renewal permit.

Permit language that if Congress changes the waste volumes in the Land Withdrawal Act, NMED will revoke the WIPP permit.

Among other important issues. CCNS may supplement our comments before negotiations may begin on June 12, 2024.

## CCNS SPECIFIC COMMENTS

CCNS references the page number in the draft renewal permit, then the section number in its comments.

### PART 1 - General Permit Conditions

In general, CCNS requests more specificity about responsibilities of the federal agencies and the contractors and definitions for “Permittees,” which must be consistent throughout the Permit. “Co-Permittee” must be defined. It is often used in two different senses in the draft renewal permit. Please see examples below.

p. 6, §1.2 Effect of Permit: “As to those activities specifically authorized or otherwise specifically addressed under this Permit, compliance with this Permit during its term shall constitute compliance, for purposes of enforcement, with Subtitle C of RCRA and the HWA, and the implementing regulations at 40 CFR Parts 264, 266, 268 except for those requirements that become effective by statute after the Permit has been issued [20.4.1.900 NMAC (incorporating 40 CFR §270.4)].” What does compliance shall constitute compliance for purposes of enforcement mean?

p. 6, §1.3.1 Permit Modification, Suspension, and Revocation: This language needs to be strengthened so that all actions are protective of human health and the environment.

p. 6, §1.3.2 Permit Renewal: Does the permit include regulation of PFAS? *See* p. 18, §2.10.1.4: This section refers to “foam-producing equipment.” The permit must address the current use of PFAS in emergency preparedness and prevention. The draft renewal permit should include the current standards for PFAS.

p. 7, §1.5.3 Definition of Facility: in second to last line, change “Permittees’ land” to “DOE’s land.” *Cf.*: see §1.5.4 Permittees: “Reference to actions taken by ‘the Permittees’ indicate actions that may be taken by either co-Permittee.” This language needs to be clarified.

p. 7, §1.5 Definitions: put in alpha order. Add definitions for “legacy waste,” “newly generated waste,” “closed” [§1.13], “co-Permittee” [§2.3.1.1.ii], and “compliance” [§1.2].

p. 9, §1.5.19 Definition of Filled Room: list the applicable filled rooms in a similar fashion as in definitions for “substantial barrier” at 1.5.13; and “explosion isolation wall” at 1.5.15.

p. 10, §1.6 Effect of Inaccuracies in Permit Application: Update permit application date – it probably is not Sept. 2009. Add to “supplementary technical documents” either “submitted with the application?” or “submitted since the 2018 application?”

p. 10, §1.7.2 Permit Term: CCNS objects to the proposed language changes.

p. 11, §1.7.7: CCNS has concerns about QA/QC in the draft renewal permit.

p. 11, §1.7.7.1 Safe Transportation of TRU Mixed Waste: The public needs more information, including a link, about the WIPP Transportation Plan. CCNS conducted a quick internet search, with no results.

p. 12, §1.7.8 Duty to Provide Information: Add “promptly” to “The Permittees shall furnish to the Secretary.” Cf. §1.7.9.4 Sampling: where the Secretary must “promptly” “furnish a copy of the results of the analysis to the Permittees.”

p. 13, §1.7.10.2 Record Retention: End of first sentence: “until post-closure” add “is completed.” A three-year retention period for strip chart recordings, waste minimization certification, “all records of all data used to complete the application for this Permit,” etc. is unacceptable. Given the Permittees plan to keep WIPP operating until at least 2080 (Answers to TID), the Permit must require that all records be retained until post-closure is complete.

p. 15, §1.7.13.1 Oral Report: add phone numbers for HWB’s main telephone number during regular business hours, NM Department of Public Safety dispatch telephone numbers, and NMED spill number.

p. 16, §1.7.13.4 Contingency Plan Implementation: add to Public E-Mail Notification List (PENL).

p. 16, §1.7.14 Other Noncompliance: Why does the public have to wait until the October monitoring report to learn about other instances of noncompliance? Add annual report to PENL.

p. 17, §1.10.1 Information Submittal: Add the NMED email address for submittals.

p. 18, §1.11 Public E-Mail Notification List (PENL). Electronic transmission requires that the Permittees post within three (3) days – not five (5) days as required in the current permit.

*Please note:* According to the U.S. Census estimates, during 2015 to 2019 only 74.6% of households in New Mexico had broadband access. That means that email notices will not reach 25.4% of New Mexico's households. NMED and the Permittees, must, as a result, expand their outreach efforts.

p. 20, §1.14.3 Index of Information Repository: change posting time from ten (10) days, to three (3) days “after the new documents are submitted to, or received from, the Secretary.”

p. 20, §1.14.4 Notification to Public of Information Repository: add newspapers in Roswell, Hobbs, and Spanish language newspapers and newspapers with a “Spanish Day” where notices may be published.

p. 21, §1.15.1 Requirements for Community Relations Plan (CRP). Last ¶: CRP must be maintained “until the termination of this Permit.” Could we insist on this language for the other places where the words “closure,” or “final closure” is used?

p. 21, §1.15.2 (2): add DOE Orders for government-to-government relations with tribes and pueblos.

p. 21, §1.15.2 (7): CCNS supports the requirements for holding quarterly WIPP Community Forum and Open House and extending an invitation to the NM Radioactive Waste Consultation Task Force to those meetings.

CCNS supports language that requires the quarterly meetings to be in-person and virtual. We support changing the ten (10) day notice requirement to a fourteen (14) day notice requirement for the WIPP Community Forum and Open House.

p. 22, §1.15.3 Government to Government Consultation: Permittees should be required to post such consultations on the WIPP Home Page and in the IR.

p. 22, §1.15.4 Initial Consultation on Community Relations Plan: Permittees should be required to document problems in the IR, not the operating record, which the public does not have ready access to.

p. 22, §1.15.5 Annual Compilation of Comments on Community Relations Plan: CCNS has been unable to locate this plan on the WIPP Home Page. Please add a requirement that it also be posted in the IR.

p. 22, §1.16.1 Applicability: Why are the dispute resolution provisions directed only to DOE? What role does the co-Permittee have in dispute resolution? There are inconsistencies in the draft permit, i.e.,

*Cf.* p. 5, Part 2, at ii: “The Permittees or the co-Permittee DOE”

*Cf.* p. 23, Part 1 §1.16.4 Tier II – Final Decision of the Secretary: “The Secretary will notify the Permittees?”

*Cf.* p. 23, Part 1 §1.16.5 Actions Not Affected by Dispute: again, “The Permittees shall proceed...”

p. 23, §1.16.6 E-Mail Notifications: Issues with use of the WIPP Home Page again. Use the IR?

## **PART 2 – General Facility Conditions**

p. 5, §2.3.1.3.c, second paragraph: define WSPF.

p. 7, §2.3.2.2: NMED personnel must be present at the daily audits and the Generator Site Technical Review (GSTR). It is not enough to be “invited.” The public wants the assurance that a certified NMED observer is involved in all aspects of the audit. If the Permittees continue to plan to keep WIPP open until at least 2080, then full public access to the audits, through representation by NMED personnel, is more important than ever. The public would appreciate the opportunity to view the audits virtually

p. 7, §2.3.2.4: Remove “and” in the last line.

p. 8, §2.3.3.1: Why is liquid waste now “not acceptable,” instead of “prohibited?” Same question for pyrophoric materials, non-mixed hazardous waste, chemical incompatibility, explosives and compressed gases, PCB waste, ignitable, corrosive and reactive waste, excluded wastes, unconfirmed waste, and waste stream profiles?



p. 17, §2.7.4 This section does not provide a timeframe for the Permittees to remedy “any deterioration or malfunction of equipment or structures which an inspection reveals.” Given the Permittees plan to operate WIPP forever, a timeframe for remedial action is required in this section to ensure that “the problem does not lead to an environmental or human health hazard.” 40 CFR §§ 264.15(c).

p. 17, §2.7.5: Common sense requires that this section include language that inspection records must be retained through closure and post-closure.

p. 17, §2.8.4: Per the EPA and NMED Informal Resolution Agreement (2017), NMED must require annual training on environmental justice issues.

p. 19, §2.10.1.5.iii: The permit must require the Permittees to bring the generators on line immediately in the case that there is a loss of off-site power. CCNS agrees that personnel should not have to stay in the underground for extended periods of time in such an emergency.

p. 20, §2.10.4: CCNS suggests the following **bolded** language: “The Permittees shall maintain aisle space **at all times** in the ...”

p. 21, §2.10.6: What is the status of the Permittees’ development and implementation of a Live Fire Extinguisher Training class? It appears from the permit language that it has not been completed. Recall the inoperable fire extinguisher that prevented the early February 2014 salt truck fire from being put out sooner. Please kindly advise.

p. 22, §2.14.1: The Permittees must be required to maintain the operating record through **post-closure** care of 30 years or longer.

### **PART 3 – Container Storage**

p. 6, §3.1.1.8: Forklift tines are 48 inches long. Pallets are generally 48 inches by 40 inches. It is unconscionable for the Permit to not require a minimum aisle space of 48 inches throughout the WIPP complex.

p. 8, Table 3.1.2: Add the word “sealed” to number of CH and RH packages under the title “Container Equivalent” in the table. For example: 40 “sealed” Contact-Handled Packages ... 8 “sealed” Remote-Handled Packages containing waste.

p. 9, §3.3.1: The descriptions of the acceptable storage containers must include the height and diameter or dimensions of the container. For example, a 55-gallon drum is 34.5 inches in height.

#### **PART 4 – Geologic Repository Disposal**

#### **PART 5 – Groundwater Detection Monitoring**

#### **PART 6 – Closure Requirements**

p. 3, §6.5.2: CCNS objects that the draft renewal permit does not state a final facility closure date. Back in the day, I heard DOE and its contractors make similar public statement in New Mexico, Colorado, Idaho and Washington, DC, that if WIPP could just get opened, DOE would be able to cleanup all the transuranic waste located at the DOE sites across the country in 25 years and then WIPP would close. The Consultation and Cooperation Agreement, the original permit (1999) and the Land Withdrawal Act basically agreed with those DOE public promises and statements. WIPP received its first shipment from LANL on March 26, 1999. The draft renewal permit should so state that the final facility closure date is March 26, 2024 with a ten-year closure period.

#### **PART 7 – Post-Closure Care Plan**

p. 3, §7.1: CCNS believes the post-closure care period should be longer than 30 years due to so many possibilities, including continued oil and gas exploration and fracking in the area of the Permian Basin. Continuing monitoring of the site is required.

p. 3, §7.2: CCNS objects to the removal of “eight” panels and “two” access drifts.

p. 4, §7.4: CCNS opposes the lack of formal publication requirements for all deed recordations and restrictions in the draft renewal permit. This section must be rewritten to include statements/warnings/restrictions about the danger of the radioactive and hazardous wastes, entering the site, exploring the site for natural resources, etc. in the recordations.

p. 5, §7.4.2.1: This section should state the applicable New Mexico law for deed recordations.

p. 5, §7.4.3: The purpose of closure and post-closure care is to keep people away from the WIPP underground. CCNS does not understand this provision that would allow removing the TRU wastes from the underground.

p. 6, §7.5: Any post-closure permit modifications should be required to be posted to the Information Repository. There should be an opportunity for public comment and public hearing.

### **PART 8 – Corrective Action for SWMUs and AOCs**

p. 6, §8.2: Deed restrictions may be required for this section, and as such must be included in the renewal permit.

p. 6, §8.4: The last sentence of this section must be expanded so it reads: “, the Permittees shall **submit a permit modification request to add the SWMU or AOC....**”

p. 15, §8.10.6: Remove “(proposed...) in the cite?”

p. 16, §8.11.4: CCNS supports quarterly progress reports for the Corrective Measures Implementation Plan.

p. 19, §8.13.1: CCNS supports a “cultural use” ground water cleanup level.

p. 20: CCNS believes the perchlorate concentration may be lower than 4 ug/L. We’ll need to double check this number.

p. 20, §8.13.2: Where does the public access the NMED *Risk Assessment Guidance for Site Investigations and Remediation (as updated)*?

Thank you for your careful consideration of the CCNS comments. Please contact me with any questions or comments.

Please confirm receipt of the CCNS comments.

Sincerely,



Joni Arends

Co-founder and Executive Director