

December 20, 2021

Mr. Ricardo Maestas  
New Mexico Environment Department (NMED)  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, NM 87505

via email: [ricardo.maestas@state.nm.us](mailto:ricardo.maestas@state.nm.us)

RE: Class 2 Permit Modification: Update Panel 8 Volatile Organic Compound Room-Based Limits

Dear Mr. Maestas:

The undersigned organizations and businesses, representing thousands of New Mexicans, oppose the Waste Isolation Pilot Plant (WIPP) Class 2 Permit Modification Request (PMR), and request that it either be denied or considered as a Class 3 PMR because of the significant public concern.

Approval of the PMR would allow a serious permit violation in not mining Panel 8 to the 13-foot height that has always been required for all eight panels by Permit Attachment A, Section A-4 at A-3.

The WIPP underground area is designated as Panels 1 through 10, although only Panels 1 through 8 will be used under the terms of this permit. Each of the seven rooms is approximately 300 feet long, 33 feet wide and 13 feet high.

The Permittees (Department of Energy (DOE) and Nuclear Waste Partnership (NWP)) are well aware of that requirement. But since 2018, the Permittees have mined the rooms in Panel 8 to 16-foot high – a clear violation of the Permit.

The Permittees have stated in public meetings that they did not notify NMED of the height change. That is a second violation of the Permit in that the Permittees did not promptly inform NMED of the change, as required by Permit Section 1.7.11.1:

The Permittees shall give notice to the Secretary, as soon as possible, of any planned physical alterations or additions to the permitted facility.

Additionally, Permit Section 1.7.11.2 provides:

The Permittees shall give advance notice to the Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

Not only did the Permittees knowingly not comply with the Permit room height requirement, and they did not provide the required notification to NMED, but they have also made a third violation of the Permit by submitting incorrect information to NMED, regarding the existing VOC Room Based Limits that are calculated for 13-foot high ceilings. Incorrect information is a violation of Permit Section 1.6 and the Certification that the modification requests are true, accurate, and complete.

As recently as March 30, 2020 in the Permit Renewal Application, the Permittees stated (at 25):

VOC Room Based Limits, and 4.6.3.2, Action Levels for Disposal Room Monitoring, and are not proposed for change in this Renewal Application.

In the July 30, 2021 Class 3 PMR for new panels 11 and 12, the Permittees stated (at 9):

Volatile organic compound limits specified in Permit Part 4, Table 4.4.1, VOC Room-Based Limits, will not change.

The statements in both of those documents are inaccurate because since 2018 when the Permittees resumed mining of Panel 8 with 16-foot high rooms, they expected to seek a PMR to change the VOC room-based limits.

Such violations of the WIPP Permit should be cited and fines and penalties should be the result, not approval of Permit changes that seek to erase those violations.

Pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42(b)(6)(B)), NMED may deny the Class 2 request. Pursuant to the Hazardous Waste Act, NMSA §74-4-4.2.D(6), NMED may deny any permit application or modification because of a violation of "any condition of a permit." Pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.42(b)(6)(C)(1)), NMED may determine that Class 3 procedures must be followed because there is significant public concern.

The undersigned organizations request that NMED either deny the request or consider it under Class 3 procedures.

Thank you for your careful consideration.

Yours truly,

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Concerned Citizens for Nuclear Safety  
Santa Fe, NM

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Nuclear Watch New Mexico  
Santa Fe, NM

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