

Important Public Participation Documents for the New Shaft Permit Modification

Four documents are important for the New Shaft permit modification's public process: the **Resolution Agreement**, the **Public Involvement Plan (PIP)**, the **Public Notice**, and the updated **Fact Sheet**. The PIP grew out of provisions in the Resolution Agreement and is supposed to be the plan of action to involve the community in the permitting process, to address community needs and concerns, and to point out community history and background. Public Notices and Fact Sheets are required by RCRA for each draft permit.

The Resolution Agreement

Every hazardous waste facility that the Environment Department's Hazardous Waste Bureau (HWB) regulates is sited in an area with a majority of people of color. Until recently, almost all information about hazardous waste permitting and the public process was English-only. To help create more equal and meaningful public involvement in permitting for all New Mexicans, in 2017 NMED entered into an *Informal Resolution Agreement* with EPA and agreed to fulfill certain requirements. Most of these continue to remain unfulfilled in this current permitting process

NMED agreed, among other things,

1. to create a **public involvement process that is accessible to all people** including those with "Limited English Proficiency" (LEP)
2. to determine **which documents are "vital" documents** that should be translated or summarized and translated into Spanish or other languages
3. to make sure that **people who don't speak English well have equal access to all the information** that is easily available to English speakers
4. to understand potentially affected communities' **history, demographics, background, needs and concerns** and to create a plan of action in the permitting process **to address those needs and concerns**
5. **to create partnerships and share information** with communities, environmental and environmental justice organizations, religious institutions, public administration, environmental, law and health departments of colleges & universities, tribes, and service organizations
6. to make sure that every hazardous waste permit application includes a study of **possible exposures to the public** that could occur because of the permit. RCRA also requires this information.

The Public Involvement Plan (PIP)

NMED creates a Public Involvement Plan for each permit to help implement the provisions of the Resolution Agreement. Theoretically the PIP can be updated and amended and NMED claims to welcome public input on these Public *Involvement* Plans. However, the HWB never tells the public that they can have input into the WIPP PIP anywhere. Despite multiple comments and requests, the WIPP PIP has never been updated. Out of the hundreds of PIPs that NMED has created, all PIPs are English-only.

The PIP is supposed to be the Hazardous Waste Bureau's plan of action to address communities' background, history, needs and concerns. Unfortunately, the WIPP PIP only addresses notification and some minimal translation and disability accommodation needs. Though demographic information is provided in the PIP, **no history, needs, background or concerns are addressed or even mentioned.** And though the Department receives millions of dollars in grants most years to help with RCRA permitting, the PIP claims that there is **only enough money and time to translate public notices and fact sheets – nothing else.** Meanwhile, the HWB has spent virtually all their money and years of time helping DOE improve their permit modification application and supporting documents. The HWB has also **not defined any vital documents** suitable for translation in the PIP, though this is a provision in the Resolution Agreement that they agreed to meet. **The LEP public clearly has far less access to important or "vital" information about this modification than English speakers do.**

The public is also **not told that the PIP even exists in any public notice or in any fact sheet,** even though the PIP is the supporting document for the entire public process. The Public Notice doesn't tell you, but there is a link to the PIP on NMED's WIPP permit page (<https://www.env.nm.gov/hazardous-waste/wipp/>) but without an explanation of what it is or how the public can comment and request amendment of the plan. The need to include public **exposure information** in the modification application is also mentioned nowhere in the PIP. And again, even though the HWB has determined that translation and interpretation into Spanish is needed for this permit modification because of the high number of LEP Spanish speakers near WIPP, **this WIPP Public Involvement Plan has not been translated into Spanish,**

The Public Notice

Though there have been some improvements, almost all the problems with the previous Public Notice still riddle the hearing Public Notice. There is some minimal information on who LEP persons can contact to receive language accommodation, but no explanation of what kinds of accommodation are possible. And the public is no longer charged for paper copies of important documents. However, **LEP Spanish speakers are still not given access to the same information that English speakers have about TTY and TTD accommodation services** even though this information is provided for other permits.

Though there is a pretty good summary of the history of this Permit Modification Request (PMR), some information is left out and most important, **NMED continues to claim that the new shaft is needed only for improved ventilation and that there is no plan to use it to expand WIPP.**

The public is now told that **the Administrative Record and other documents** are online and available in Santa Fe and Carlsbad, but the Administrative Record has been so limited as to leave out almost all "vital" information on geology and hydrology, and leaves out the only exposure study done for WIPP in the last 30 years.

In terms of language access, the Notice explains that the *Administrative Record Index* is available in both English and Spanish, but **doesn't mention that both the Public Notice and the updated Fact Sheet are also available in English and Spanish.** And on the webpage, only the link to the Spanish Index is actually in Spanish. In fact, it is the *only* Spanish language in the entire, very long, WIPP permit webpage. **Even the links to the Spanish Public Notice and the Spanish Fact Sheet are English-only.** And though the Public Notice, the updated Fact Sheet and the Index to the

Administrative Record have been translated into Spanish, none of these provides more than minimal information about WIPP, the waste, the new shaft, WIPP geology and hydrology and much much more.

The Public Notice does provide a good description of **how to participate by Zoom or by phone in the public hearing** and notes that NMED is providing simultaneous Spanish interpretation for both methods of participation.

The Updated Fact Sheet

The updated Fact Sheet is also somewhat improved from the previous version but still falls far short of what is necessary to inform the public about this modification. English speakers have access to the Administrative Record but that has been limited and doesn't include all necessary geological, hydrological, exposure and other information that even English speakers need to understand the full picture of this shaft modification. And if you are not fluent in English you are out of luck because your total information will be the Public Notice, this very inadequate Fact Sheet and an index of the documents in the Administrative Record. **The Fact Sheet in no way summarizes even the draft Permit, let alone all the other "vital" or important information** needed to understand what this complex modification is really about.

The WIPP Facility: The description of the WIPP facility leaves so much out that it is impossible to understand the relationship of the new shaft to the original facility and to the planned WIPP expansion. The Fact Sheet makes no mention of the shafts that already exist, what waste panels and waste rooms are, that a large part of the underground is contaminated, and many other things that have a bearing on this new shaft. Salt "creeping" is mentioned but no description provided about what "salt creep" is and how it is expected to entomb the waste.

Geology/Hydrology: The previous fact sheet included nothing at all about hydrology and only about 20 words on the geology at WIPP so this fact sheet is slightly improved. However, the information provided about what is one of the most complex geological and hydrological areas in the world is not much more than a list of the three primary formations and a statement that groundwater and potential earthquakes are being monitored. No mention is made of this being a major karst area or that WIPP is in the middle of one of the largest oil production areas in the world or that many other mineral resources are being mined around WIPP. It is no coincidence that they are monitoring for "geomechanical pressures" since the massive oil and gas industry surrounding WIPP can contribute to an increase in earthquakes.

Types and Quantities of Waste: Though short, this section explains in simple terms what the different kinds of hazardous waste are. However, instead of summarizing information about what waste is acceptable at WIPP, the reader is referred to the permit for this information. Since the permit is English-only, this information is inaccessible for LEP persons.

Basis and Justification for the Draft Permit: This is the heart of the permit modification but the stated justification for the new shaft in the Fact Sheet just doesn't work. **NMED continues to deny that expanding WIPP is the primary reason for building a new shaft** and continues to claim it's *only* a ventilation shaft for improved airflow in the underground. If that's what it's for, why build it 1200 feet west of the repository so they have to build corridors, or "drifts" to connect the shaft and the current repository? No geological justification or information is provided about why

the shaft is being built this far away. Is it just a coincidence that the drifts also just happen to be where they will build the new panels and waste disposal rooms for the new, expanded WIPP?

DOE has been talking about their desired WIPP expansion to Congress, in their budget, in various Environmental Impact Statements, in their Strategic Plan, to the GAO, to the NAS and even to NMED. But NMED doesn't want to talk about DOE's expansion plans in this modification. In fact, as of this writing they are trying to **prohibit any mention of DOE's expansion plans during the public hearing**. Since the shaft can't be finished sooner than some months before all disposal operations must end under the current permit, NMED's stated justification makes no sense. Why build an almost \$200 million shaft for a few months of waste disposal? Only if DOE's plans to expand WIPP are included in the justification for this new shaft does the shaft make any sense.

Zoom and phone & other participation: As in the Public Notice there is a good description of how to participate by Zoom or by phone and information is given for people who want to hear the simultaneous Spanish interpretation. Contact information is given for people who need other language services or disability accommodation. Again, however, Spanish information for TDD, TDY or TTY users is not provided.

There is a good description on how to provide written or oral public comment before or during the hearing and information about where to read documents in the Administrative Record. However, again, the Fact Sheet only says the Administrative Record Index is translated into Spanish and doesn't mention that both the updated Fact Sheet and both Public Notices have also been translated.

Exposure Information: Nowhere in the PIP, Public Notices or in the updated Fact Sheet does the Hazardous Bureau address the **lack of exposure information** for this modification. Yet RCRA requires this information to be in all hazardous waste facility permit applications, and NMED agreed to require this information for all these applications when they signed the Resolution Agreement.

Although English speakers have been given far more information about this New Shaft Permit Modification in the public documents and in the Administrative Record than LEP persons have, even the information provided for English speakers is sadly deficient.

The WIPP facility, the geology and hydrology in the area, and the relationship of the new shaft to both the original facility and to DOE's expansion plans are all extremely complex. NMED claims to want to increase public involvement in permitting and especially to provide for meaningful involvement for LEP persons and for communities of color. However, the HWB's actions in so severely limiting the amount of information available for everyone and then further limiting the availability of that information for LEP Spanish speakers to almost nothing, certainly bring those claims into question.