

**NEW STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT DEPARTMENT**

**THE MATTER OF HEARING DETERMINATION
REQUEST CLASS 3 EXCAVATION OF A NEW SHAFT
AND ASSOCIATED CONNECTING DRIFTS
PERMIT MODIFICATION TO THE WIPP
HAZARDOUS WASTE FACILITY PERMIT**

HWB 21 02 P

**CITIZEN ACTION NEW MEXICO (CANM) SUPPLEMENTAL STATEMENT
IN SUPPORT OF MOTION TO DISMISS PMR**

On April 23, 2021, CANM received Supplemental Information from the Southwest Research and Information Center (SRIC) that has an attached copy of an Environmental Protection Agency (EPA) letter dated April 20, 2021.

The EPA letter contains information that clearly demonstrates the truthfulness of allegations parties have made in this proceeding (except HWB, DOE and NWP) that approval of the proposed PMR would allow expansion of radioactive and hazardous waste disposal at the Waste Isolation Pilot Plant (WIPP). Two replacement panels and additional new panels to receive additional waste require prior EPA approval. 40 CFR 194.4(b)(3). Further, EPA states that at least two years could be required for a public rulemaking hearing.

CANM stated in its Motion of Opposition to the HWB Motion in *limine* that “NMAC (incorporating 40 CFR 270.42(c)(1)(iii)) requires that the request explain why the modification is needed.” Further in CANM’s List of Issues: “The omission of and failure to fully disclose material facts by HWB and DOE and the Nuclear Waste Partnership for the expansion of WIPP should result in PMR denial. 40 CFR 270.43 (2).” By not disclosing the intended WIPP expansion and not providing and meeting the EPA requirements prior to redesign for expansion of WIPP, HWB, DOE and NWP failed to disclose material facts that constitutes grounds for dismissal of the PMR.

The technical issues that the EPA letter raises are substantial with respect to long term viability of WIPP and potential for spreading radioactive contamination:

- Higher solubility of plutonium leading to higher rates of release to the environment.
- Movement (Creep) of salt in closed areas and more open areas than originally planned.
- Lack of identification of potential for brine pockets underlying the waste area of the WIPP Salado formation.
- Waste being disposed much closer to the western facility boundary that shortens the distance for a possible offsite release..
- A need for more characterization wells to model a release from drilling intrusion at the western boundary.
- Information on the full type of the waste streams.
- Information regarding the full redesign for the new repository.

The Motion in *limine* must be denied by the Hearing Officer. By HWB seeking to impose the Motion in *limine* related to expansion, all of the above information that EPA is now requiring would not have been considered.

The Hearing Officer should dismiss the PMR with conditions. The fact that HWB, DOE and NWP so egregiously misled the public 1) about WIPP expansion and 2) failed to comply with the EPA requirements should be noted by the Hearing Officer. The HWB Motion in *limine* made derogatory statements about public parties' submitting "conspiratorial" comments regarding expansion that were actually true – that the PMR represents an expansion of WIPP. At a minimum the HWB owes the public:

1. Notice of Dismissal of the PMR posted on its WIPP website.
2. A public retraction of its fact sheet for the PMR to be posted on its website for WIPP.
3. A HWB press release about Dismissal, the EPA letter and the regulatory requirements and technical conditions therein.

Submitted electronically April 23, 2021

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Certificate of Service

I hereby certify that a true and correct copy of this List of Issues was served on the following via electronic transmission on April 21, 2021:

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