



Michelle Lujan Grisham
Governor

Howie C. Morales
Lt. Governor

NEW MEXICO ENVIRONMENT DEPARTMENT

Harold Runnels Building
1190 Saint Francis Drive, PO Box 5469
Santa Fe, NM 87502-5469
Telephone (505) 827-2855
www.env.nm.gov



James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

October 22, 2020

DOE-SR Operations Office
SRS Citizens Advisory Board
P. O. Box A
Bldg 730-B
Aiken, SC 29802
srscitizensadvisoryboard@gmail.com
srscitizensadvisoryboard@srs.gov

RE: Environmental Management Site-Specific Advisory Board Public Comments

Dear Board Members:

On October 7, 2020, the Office of Environmental Management within the U.S. Department of Energy (DOE) published a notice in the Federal Register, 85 Fed. Reg. 63,263, announcing an online virtual meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site (SRS). According to the notice, the meeting will occur Monday, October 26, 2020 from 1:00 to 4:00 pm Eastern. As there will not be an opportunity for live public comment during the online meeting, the notice stated that written public statements may be filed with the EM SSAB before or after the meeting, and that comments received by October 23 "will be read aloud during the virtual meeting." Accordingly, the New Mexico Environment Department (NMED) offers the following public comments for the EM SSAB's consideration.

1. DOE/National Nuclear Security Administration (NNSA) publicly stated plans to dilute and dispose of non-pit plutonium waste. DOE/NNSA plans to dispose of this waste at the Waste Isolation Pilot Plant (WIPP) facility in Carlsbad, New Mexico. However, DOE/NNSA has not yet discussed the regulatory implications of such plans with NMED nor satisfied the approval conditions of its Resource Conservation and Recovery Act (RCRA) Hazardous Waste Facility Permit issued by the State of New Mexico. The State of New Mexico requests that the EM SSAB carefully consider the ramifications of the incomplete analysis of the proposed final disposition pathway for this waste.

On December 24, 2015, DOE/NNSA announced in the Federal Register, 80 Fed. Reg 80,348, that its preferred alternative for disposition of the 6 metric tons (MT) of non-pit plutonium was the dilution/downblending of the waste at SRS and disposal at WIPP, located near Carlsbad, New Mexico, otherwise known as the "WIPP Disposal Alternative." At that time, DOE/NNSA did not state a preferred

alternative for dispositioning the associated 7.1 MT of pit plutonium. In its April 5, 2016 Record of Decision, 81 Fed. Reg. 19,588, DOE/NNSA announced its decision to implement their preferred alternative for the disposition of 6 MT of non-pit plutonium as contact- handled transuranic (CH-TRU) waste for disposal at WIPP. A disposition path for the 7.1 MT of pit plutonium was not decided at this time.

On July 23, 2020, DOE/NNSA announced that SRS had resumed plutonium downblending. In its press release, DOE/NNSA stated that “Plutonium downblending is the process of mixing plutonium oxide with a multicomponent adulterant. After downblending, the plutonium will be shipped to the Waste Isolation Pilot Plant in New Mexico for disposal.”

On August 28, 2020, DOE/NNSA issued an amended decision in the Federal Register, 85 Fed. Reg. 53,350, stating that it will now dispose of an additional 7.1 MT of pit plutonium as CH-TRU waste at the WIPP facility. According to DOE/NNSA, the process would be the same as described for the 6 MT of non-pit plutonium that DOE/NNSA had previously delineated for disposal at WIPP. Conversion to oxide may be performed at either Los Alamos National Laboratory (LANL) or at SRS.

DOE Environmental Management must satisfy the requirements in NMED’s Hazardous Waste Facility Permit, Part 2 and Attachment C, in order for this waste to be eligible for disposal at the WIPP facility. To date, it has not specifically been articulated how DOE Environmental Management will ensure compliance with the Permit’s Waste Acceptance Criteria. DOE must engage with NMED to demonstrate such waste will meet the WIPP Waste Acceptance Criteria.

2. The State of New Mexico requests EM SSAB’s support for the reinstatement of \$31.5 M in Land Withdrawal Act funding for the safe transport of SRS waste to the WIPP.

Many DOE facilities across the nation, including SRS, depend heavily on New Mexico’s WIPP for final disposition of eligible waste. The DOE acknowledges in the August 2019 *DOE Carlsbad Field Office Strategic Plan 2019-2024* that a major investment in facility maintenance and infrastructure repair recapitalization and modernization is necessary to prevent costly failures and to continue to safely perform mission requirements. Just as the WIPP facility has exceeded its design life and needs regular upgrades and maintenance, the roads in New Mexico also need regular upgrades and maintenance to ensure safe transport of shipments to WIPP to prevent catastrophic consequences to human health and the environment.

DOE completed the Land Withdrawal Act (LWA) investments in the New Mexico highways leading to the WIPP in 2012, with two DOE-funded road improvement projects in subsequent years one of which was required as part of a settlement agreement associated with an administrative compliance order.

To mitigate risk for all of our nation’s DOE facilities, the DOE must reinstate funding to the State of New Mexico as authorized in Section 15 of the LWA and provide an annual appropriation of \$31.5 million in federal fiscal year 2021 and subsequently indexed for inflation for the remaining useful life of WIPP. NMED requests the SRS EM SSAB’s support as the State of New Mexico pursues such infrastructure funding associated with impacts from DOE activities within the state.

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Thank you for the opportunity to provide comments. For additional information regarding New Mexico's concerns please find attached NMED's comment letter on the *SRS Draft Environmental Impact Statement for Plutonium Pit Production*.

Sincerely,

James C. Kenney
Cabinet Secretary

Enclosure

cc: Stephanie Stringer, Director, Resource Protection Division
Courtney Kerster, Director of Federal Affairs, Office of Governor Michelle Lujan Grisham