



April 19, 2023

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

Subject: Public Comment Period and Opportunity to Request a Public Hearing on the Draft Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (WIPP) in Carlsbad, New Mexico, EPA Identification Number - NM4890139088

Mr. Maestas:

The Idaho Department of Environmental Quality (DEQ) is submitting the following comments in response to the New Mexico Environment Department's (NMED) proposed changes to the draft WIPP Permit that have considerable negative effects on the U.S. Department of Energy (DOE) and the State of Idaho's environmental cleanup goals. As the only operating geological repository in the United States, WIPP is an important site in the cleanup mission and DEQ fully supports its continued operation. Unfortunately, several of the proposed changes, if implemented, would obstruct WIPP's ability to continue its critical mission.

Section 1.3.1, Permit Actions – "This permit shall be revoked within 30 calendar days if the Land Withdrawal Act (Pub. L. 102-579, as amended) volumetric disposal limit for TRU waste of 6.2 million cubic feet at the WIPP facility is increased or otherwise changed by the U.S. Congress."

Comment: The safe and effective cleanup of waste at the Idaho National Laboratory (INL) site will be impacted by the premature closing of the WIPP facility. In 1995, the State of Idaho, US Navy, and DOE reached an agreement (1995 Settlement Agreement) settling a lawsuit filed by the state to resolve several issues, one of which included the removal of various forms of transuranic (TRU) waste from the state. As such, DOE has a legal obligation to the State of Idaho to do so. DEQ does not support any permit condition, beyond the scope of authority of the Resource Conservation and Recovery Act (RCRA) which prematurely closes WIPP or adversely impacts the ability of DOE to fulfill its commitment to the State of Idaho. DEQ requests that this permit condition be removed.

Section 4.2.1.4, Prioritization and Risk Reduction of New Mexico Waste – "While this permit remains in effect, the Permittees shall prioritize the emplacement of stored TRU mixed waste at WIPP from the clean-up activities at the Los Alamos National Laboratory (LANL). On an annual

basis, the volume of stored TRU mixed waste emplaced in a HWDU from the LANL must exceed the volume of stored TRU mixed waste from all other individual generator sites.”

Comment: DEQ requests an explanation regarding NMED’s authority to require the prioritization of LANL waste shipped to WIPP. According to the EPA, “The RCRA hazardous waste permitting program ensures the safe management of hazardous wastes.” It is unclear how this requirement is protective of human health and the environment at the WIPP facility. Pursuant to the Supplemental Agreement Concerning Conditional Waiver of Sections D.2.e and K.1 of 1995 Settlement Agreement between DOE and the State of Idaho dated November 6, 2019, DOE will allocate fifty-five percent (55%) of all TRU waste shipments received at WIPP for INL TRU waste each year until shipments from INL are complete, calculated on a three-year running average. Additionally, DOE has also agreed to give INL priority for shipments for TRU waste to WIPP, in that if a shipment allotted to a generator site other than INL is not made, such shipment allotment will be made available to INL in accordance with the requirements of Section 4.b of the Supplemental Agreement.

INL has the largest inventory of TRU waste ready to be shipped to WIPP. DEQ understands NMED concerns regarding the timely cleanup of the LANL site; however, NMED must recognize the integral role WIPP plays for other generator sites throughout the DOE-complex. This permit condition extends beyond the scope of RCRA and is not supported by DEQ. DEQ requests that this permit condition be removed.

Section C-1d, Control of Waste Acceptance – “The Secretary reserves the right to prohibit shipment and emplacement of TRU mixed wastes at the WIPP facility for, but not limited to, the following reasons... (4) based on any allegation of noncompliance.”

Comment: Suspending shipment and emplacement of TRU waste at WIPP based solely on allegations of noncompliance will severely affect not only the INL, but other generators in the DOE-complex. DEQ supports the safe and regulatory compliant handling of TRU waste and fully investigates any allegations of noncompliance at the INL. Periodically, such allegations may prove to be unfounded. As environmental regulators, we must ensure that the information received regarding noncompliance is credible and substantiated. Allegations alone should not necessitate the closure of such an important facility as WIPP. DEQ requests that this permit condition be removed.

Continued operation of the WIPP facility is imperative to meeting the cleanup goals for not only the State of Idaho, but other states that host federal cleanup sites. DEQ appreciates the efforts extended by NMED and the citizens of New Mexico in hosting the WIPP facility and ensuring

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compliant management of our nation's TRU waste. As no other geologic repository exists for TRU waste, WIPP must remain operational as it is critical to protecting human health and the environment.

DEQ and NMED should cooperatively advocate for DOE to develop and issue a long-term, integrated plan and schedule for WIPP that considers the total TRU waste inventory across the complex, disposal space needs, and impacts of current and future National Nuclear Security Administration missions (e.g., pit production at LANL and Savannah River Site). DEQ encourages NMED to revise the draft permit in which WIPP's essential mission continues and allows DOE to fulfill its current obligations to the states.

DEQ thanks you for this opportunity to provide public comment on the proposed permit changes and looks forward to collaborating with NMED in the future.

If there are any questions, please contact Natalie Walker, Hazardous Waste Bureau Chief, at natalie.walker@deq.idaho.gov or (208) 373-0506 or Mark Clough, Idaho Settlement Agreement Coordinator, at mark.clough@deq.idaho.gov or (208) 373-0528.

Sincerely,

A handwritten signature in cursive script that reads "Natalie Walker".

Natalie Walker
Hazardous Waste Bureau Chief
Idaho Department of Environmental Quality

ec: Mary Winsor, EPA Region X
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