



Department of Energy
Office of Science
Pacific Northwest Site Office
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JUN 22, 2026

26-PNSO-0185

Ms. Megan McLean
WIPP Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

Dear Ms. McLean:

TRANSMITTAL OF PACIFIC NORTHWEST SITE OFFICE COMMENTS ON THE WASTE ISOLATION PILOT PLANT HAZARDOUS WASTE FACILITY PERMIT

Enclosed are comments about the potential impacts to Pacific Northwest National Laboratory resulting from the New Mexico Environment Department (NMED) proposed Agency Initiated Modification (AIM) to the hazardous waste facility permit for the Waste Isolation Pilot Plant (WIPP). The Pacific Northwest Site Office (PNSO) opposes the NMED's Agency Initiated Modification draft WIPP Permit and requests party status and a public hearing. PNSO requests that the AIM/draft Permit be rescinded.

If you or your staff have any questions or require clarification regarding the enclosed comments, please contact Abby Friedman, at (509) 554-2094.

Sincerely,

**ASHLEY
MORRIS**

Ashley T. Morris
Acting Manager

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Enclosure

NMED's proposed WIPP permit modifications could block the only current disposal route for PNNL's TRU waste. Pursuant to DOE M 435.1-1(2)(F)(19), Pacific Northwest National Laboratory (PNNL) would require special and non-guaranteed permission to generate waste with no identified path to disposal. The 2025 Revised Legacy TRU Waste Disposal Plan ("Legacy Plan") classified PNNL operational waste as "non-legacy" waste because it comes from ongoing research and mission activities rather than cleanup of historical Cold War or Manhattan Project-era facilities. While all Hanford waste fell under the "legacy" category, PNNL's waste streams were specifically identified as an exception. Since the WIPP Legacy TRU Waste Disposal Plan only required, to the extent practicable as articulated in the final plan Panel 12 will be reserved for legacy waste, this had minimal impact on PNNL operations and no impact on the existence of a disposal pathway for PNNL-generated TRU waste.

NMED's proposed WIPP permit modification will take precedence over the Legacy Plan (see proposed modification to Part 4, Section 4.2.1.5., stating "The disposal of *legacy waste*, as defined in Part 1, Section 1.5.24..." (emphasis added)). NMED's proposal will create two categories of waste: Projected Waste and Legacy Waste. Projected Waste would be waste that "has not [yet] been generated (does not physically exist)" and would include waste from ongoing projects and decontamination and decommissioning waste that has not yet been packaged. Legacy Waste would be "waste placed in retrievable storage that is part of a TRU or TRU mixed waste stream without a projected waste component." The Legacy Waste definition would apply to all generator and storage sites except those with state-agency adopted site-specific legacy waste definitions. There is no similar exception for the Projected Waste definition. Hanford has a site-specific legacy waste definition – specifically, Hanford legacy waste is all waste retrieved, buried, and/or generated prior to June 2000 – so NMED's proposed Legacy Waste definition would not apply to the Hanford site. Under the Agency-Initiated Modification, the proposed Projected Waste definition would apply, however, and so TRU waste from ongoing and future PNNL projects (and even some Hanford cleanup waste that has not yet been generated) would be Projected Waste. When read together with the proposed permit modifications requiring prioritization of Legacy Waste for emplacement (discussed below), these potentially eliminate the only pathway to disposal for PNNL's TRU waste

The proposed permit changes in Permit Part 4, Sections 4.2.1.4 and 4.2.1.5 also would establish mandatory disposal targets that reserve most WIPP shipping for legacy waste, particularly LANL legacy waste. While these targets are technically set as minimums, the requirement to prioritize older, existing waste means that almost all waste disposed of will realistically be legacy waste (whether from LANL or elsewhere). Projected waste would only be eligible for emplacement if capacity remained after all LANL legacy waste has been accommodated. If the proposed modifications are finalized, PNNL would be competing for a much smaller portion of the available disposal capacity. At worst there would be no disposal pathway for projected waste.

Further, allowing NM to prioritize in-state waste versus out-of-state waste arguably violates the dormant commerce clause because it is an unconstitutional restriction on interstate commerce. See *Philadelphia v. New Jersey*, 437 U.S. 617, 618 (1978). NM would need to show it is discriminating the LANL waste from other states' waste based on some inherent characteristic of the LANL waste, rather than the in/out of state aspect, to avoid violating the commerce clause.

Additionally, the proposed “cease shipment” provision in Permit Part 4, Section 4.2.1.4, vi., would require all shipments to stop until compliance is restored if WIPP does not meet the required legacy waste disposal targets. That could delay or halt PNNL shipments even if PNNL has operational needs, storage limitations, or regulatory drivers requiring disposal.

Overall, the proposed permit modifications move PNNL from a lower priority but still flexible shipping position to one with more limited disposal access at best, and at worst they could eliminate the only disposal pathway for PNNL’s TRU waste. Therefore, the Pacific Northwest Site Office (PNSO) opposes the NMED’s Agency Initiated Modification draft WIPP Permit and a request a public meeting. PNSO requests that the AIM/draft Permit be rescinded.