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Megan,

I am submitting comments on the April 23, 2026 Agency-Initiated Modification (**AIM**) issued by the New Mexico Environment Department (**NMED**), proposing changes to the Waste Isolation Pilot Plant (**WIPP**) Hazardous Waste Facility Permit (**Permit**) jointly operated by the US Department of Energy (**DOE**) Carlsbad Field Office and Salado Isolation Mining Contractors, LLC (**Permittees**). Please consider and provide responses to my comments when you deliberate modifying the Permit as identified in the AIM. I am also requesting a public hearing, which I will explain more fully at the end of my comments.

The Fact Sheet, after six and a half pages of mind-numbing background information and a list of relevant documents in the administrative record, finally states that *“there is sufficient basis to develop an agency-initiated modification that clarifies the priority to **emplace legacy waste and reduce the risk of LANL legacy waste during the current permit term.**”* (emphasis added) These priorities were stipulated following negotiations among the Parties during the last permit renewal in 2023, and were codified in Permit Part 4, Section 4.2.1.4, *Prioritization and Risk Reduction of New Mexico Waste* and Section 4.2.1.5, *The Legacy TRU Waste Disposal Plan*. Both of these permit conditions as written are arguably vague and unenforceable. In other words, there was no metric for demonstrating whether the Permittees had actually “prioritized” emplacement of LANL legacy waste at WIPP. Likewise, the definition of “legacy” waste in the Revised Legacy TRU Waste Disposal Plan (**LTWDP**) (AR 251105) is sufficiently broad and open to interpretation, and is unenforceable because it is not incorporated in the Permit.

NMED’s justification for proposing this AIM is that the existing language in Permit Part 4, Section 4.2.1.4 was not accomplishing the goals of prioritizing LANL waste nor reducing the risk to New Mexicans from such waste remaining at the LANL site. NMED stated, *“A new permit condition is needed to clearly establish how the risk from New Mexico waste will be reduced and how this waste will be prioritized for emplacement at WIPP.”* With respect to Permit Part 4, Section 4.2.1.5, NMED was dissatisfied that the Permittees *“... did not substantively address NMED’s requested improvements or stakeholder feedback”* when revising the initial LTWDP in November 2025.

NMED also noted that the Permittees agreed during permit renewal negotiations to reserve Panel 12 for legacy waste disposal within the current permit term ending in 2033. However, the Permittees' November 2025 LTWDP reneged on that commitment by forecasting that Panel 12 would not be available for emplacement of waste until 2035, and their March 4, 2026 Class 1* Permit Modification Notification (AR 260305) proposed modifying Table G-1 to indicate that the earliest Panel 12 would be available to receive waste would be December 2035, nearly seven and a half years later than presumed (July 2028) when the permit was renewed in November 2023. This definitely satisfies the criteria in 40 CFR §270.41.a(2) "Information" for NMED to justify their proposed AIM.

Comments on the Agency-Initiated Modification

1. Justification for the AIM – NMED has adequately justified the AIM by describing the specific information identified above that was not available at the time the permit was issued in 2023 that would have led to different or additional permit conditions being imposed in the final permit.
2. Proposed definitions – NMED has crafted a two-step process for identifying what constitutes legacy waste that establishes both clarity and enforceability. It has done so by referencing the 2025 Annual Transuranic Waste Inventory Report (**ATWIR**) (AR 260107) and, from its Glossary, incorporating its definition of "Projected Inventory" as the definition in Permit Part 1, Section 1.5.23, for "Projected Waste." In turn, "Legacy Waste" is defined in Permit Part 1, Section 1.5.24, as waste in retrievable storage that is part of a waste stream without a projected waste component. This definition neatly and succinctly captures the bulk of existing waste that presents the greatest risk to the public that should be prioritized for timely disposal at WIPP, excluding waste projected after 2033.

I support both definitions. However, I suggest that the definition for projected waste be written in the style of other definitions in Section 1.5 by inserting, "**Projected Waste**" means the part of the..." at the beginning of the definition.

I also appreciate and support the clarifying language added to the opening paragraph of Section 1.5 stating, "A rebuttable presumption applies to permit definitions, placing the burden of persuasion on the Permittees to demonstrate otherwise."

3. My fundamental opposition to imposing disposal quotas on a generator/storage site through a disposal facility permit – I have long understood the unique circumstances surrounding the WIPP as a federal facility regulated by New Mexico under RCRA and State statutes and regulations. WIPP is the first and (to my knowledge still) only geologic repository for disposal of waste in the United States, and I was the NMED permit writer involved in the development of the original permit issued in 1999. I am also aware of the roles that other states, such as Idaho and South Carolina, have played in compelling their federal facilities to enter into legally binding agreements (e.g., Idaho Settlement

Agreement for INL, various agreements and court orders for SRS) to ship their waste to WIPP on specific timelines. Other states have largely relied on Federal Facility Compliance agreements or consent orders to drive cleanup at their DOE facilities (Hanford, Rocky Flats, Oak Ridge, even Los Alamos), but generally they don't/didn't mandate disposal at WIPP. None of those drivers have been RCRA permits for those facilities.

Likewise, although the WIPP permit extends beyond its facility boundary and mandates waste characterization requirements of generator/storage sites and imposes waste acceptance criteria for receipt of their waste at WIPP, the permit makes no demand for *when* waste *must* be shipped to WIPP. The AIM is attempting to impose this precedent with the language proposed in Permit Part 4, Sections 4.2.1.4 and 4.2.1.5.

Neither does WIPP control the budgets of generator/storage sites, and the appropriate federal budgetary considerations to meet the requirements of those two sections are totally absent in the proposed language. It's not as if simply including that language in a RCRA permit will make it happen... as Rameses II (played by Yul Brynner) frequently said in Cecil B. DeMille's film, *The Ten Commandments*, "So let it be written, so let it be done," his character as Pharaoh in Egypt had *authority* to make such pronouncements. NMED has no such unilateral authority in this case.

While it seems that NMED has avoided (or tried and failed) persuading LANL directly to seek sufficient funding to characterize and certify more legacy waste for shipment to WIPP, it may be that your true intent is to shake things up with this backdoor approach in hopes of getting the attention of DOE EM in Washington and bringing them to the negotiating table to make concessions regarding funding for LANL legacy waste. If that is the case, I wish you the best, but I'm not optimistic for a favorable outcome.

4. Carlsbad community concerns about WIPP workforce impacts of this AIM – I've read some of the comments on this AIM written by citizens of and organizations in Lea and Eddy counties, expressing concerns that implementing the conditions regarding failure to achieve LANL legacy waste emplacement goals would *"reduce operations from 3 shifts to 1 shift, causing massive layoffs and severely disrupting the economy of Carlsbad"*, with some sympathy. I also detect some sense that they believe WIPP will be able to support thousands of high-quality jobs indefinitely (or at least until 2080). However, despite plans for WIPP to double the footprint of the repository to accommodate disposal of surplus plutonium, pit production waste, and other visions of abundant TRU waste available for disposal in the future, the reality has always been that the future is uncertain, and it is more likely that WIPP will slowly, inexorably wind down operations, going out not with a bang but with a whimper. I distinctly remember hearing this directly from then-CBFO manager Ines Triay back in the early 2000s during an NMED meeting, saying that the TRU waste inventory would start to

decline and shipments begin to drop off beginning around 2017 or so, and that WIPP would eventually operate with a skeleton crew.

With this in mind, consider the Permittees' March 4, 2026 Class 1* Permit Modification Notification entitled, "Revise Anticipated Earliest Closure Dates for Underground Hazardous Waste Disposal Units in Permit Attachment G." There have been numerous similar notifications submitted to NMED over the years to revise the dates in this permit attachment, nearly all of them unremarkable. The specific language regarding these revisions is found in Permit Attachment G, Closure Plan:

G-1d(1) Schedule for Panel Closure

*The anticipated schedule for the closure of the underground HWDUs is shown in Figure M-61. Underground HWDUs should be ready for closure according to the schedule in Table G-1. Table G-1 shows actual dates for completed activities and future dates based on the facility design parameters discussed in Section G-1c. **These future dates are estimates for planning and permitting purposes. Actual dates may vary depending on the availability of waste from the generator sites.** (emphasis added)*

Depicted below is proposed Table G-1 from the recent Class 1* notification, showing changes to future dates that were in the renewal permit issued in October 2023. I have added two additional columns on the right to indicate the duration in months of operations from start to end for each panel, both actual and future, to better understand the impact of these changes. Actual dates and durations are indicated by an asterisk (*).

Anticipated Earliest Closure Dates for the Underground HWDUs
Table G-1

HWDU	Operations Start	Operations End	Closure Start ^a	Closure End ^b	Initial Ops (months)	Revised Ops (months)
PANEL 1	3/99*	3/03*	3/03*	5/20*	48*	
PANEL 2	3/03*	10/05*	10/05*	5/20*	31*	
PANEL 3	4/05*	2/07*	2/07*	8/19*	22*	
PANEL 4	1/07*	5/09*	5/09*	8/19*	28*	
PANEL 5	3/09*	7/11*	7/11*	8/19*	28*	
PANEL 6	3/11*	1/14*	1/14*	8/19*	34*	
PANEL 7	9/13*	10/22*	10/22*	2/23*	109*	
PANEL 8	11/22	4/26 9/28	4/26 10/28	10/26 4/29	41	70
PANEL 9**	N/A	N/A	N/A	N/A		
PANEL 10***	8/25 N/A	9/30 N/A	10/30 N/A	3/31 N/A		
PANEL 11	8/25 9/28	7/28 12/35	8/28 1/36	2/29 7/36	35	87
PANEL 12	7/28 12/35	6/31 12/45	7/31 1/46	1/32 7/46	35	120

Some observations can be made from this table:

- The history of operations for Panels 1-6 depict an initial ramp up in Panel 1 after opening, with a fairly consistent duration of around 30 months each to fill Panels 2-6.
- Panel 7 operations reflect the multi-year hiatus and slowdown from the ruptured drum and reduced ventilation.
- Panel 8 future operations likely factored in a period of reduced ventilation until the new filter building would come online.
- Panels 11 and 12 future operations assumed a conservative but realistic duration of 35 months (about three years) to fill a panel.
- Note that Panel 12 was assumed to be available through the ten-year term of the renewal permit.
- Also note how the revised future durations (in red) become progressively longer, from nearly six years for Panel 8 to a full ten years for Panel 12.

In the Permittees' June 18, 2026 comments on NMED's AIM, they explicitly referenced the change to Table G-1 and stated (page 12 of 16), "*Note that the Permittees have no control over the anticipated earliest Panel "Operations Start" and "Operations End" dates in Table G-1 because they are **based on availability of generator/storage site waste** and other assumptions as described in the Permit.*" (emphasis added) This begs the question... what happened to cause these significant upward estimates?

On May 23, 2025, President Trump signed Executive Order 14302, titled "Reinvigorating the Nuclear Industrial Base," which unexpectedly terminated the surplus plutonium "dilute and dispose" program that had been envisioned to provide WIPP with decades of waste for disposal. With this particular waste stream no longer available in the quantities anticipated (except for SRS surplus plutonium covered by a federal court order), a crucial component of WIPP's expansion plan has been stymied. Granted, with a change of administration in 2028 can come a reversal of this executive order, but that remains to be seen and it doesn't bode for stability in long-range planning for WIPP.

What is reasonable to assume in long-range planning? An abundance of legacy TRU waste across the DOE complex. The decades of waste disposal at WIPP have eliminated what was euphemistically referred to as "low-hanging fruit," the waste that was well documented, straightforward to characterize and certify, and easy to get rid of. Generator/storage sites are now mostly in the business of dealing with the "high-hanging fruit" (poorly documented, difficult/dangerous to characterize, etc.) and newly generated waste. Which should be the generator/storage sites' priority? I believe it is the legacy waste. Get the tools (i.e., the funding) to strip your trees of the high-hanging fruit.

And my advice to the good people of southeastern New Mexico? Don't blame NMED if/when this AIM fails, but you still find that workers get laid off from

WIPP because it won't require a full (bloated) workforce working three shifts to emplace waste in Panel 12 over a ten-year period when one shift will suffice.

5. Request for a hearing – I received a courtesy email notification from you on June 12, 2026, saying that hearing requestors would be invited to participate in pre-hearing negotiations to resolve issues giving rise to opposition to the NMED draft permit. I have been involved in past draft permit negotiations, both as the NMED WIPP project leader before my retirement in 2014, and subsequently as a private citizen. I responded to you stating that I would be submitting comments, and that I had intended to request a hearing, but upon learning that the dates set for negotiations conflicted with prior commitment of a personal nature where I would be out of state, I would be unable to attend. The aforementioned email stated:

Action Required: *You must either (1) confirm that you will attend the negotiations, (2) designate a representative who will attend on your behalf, or (3) withdraw your request for a hearing if you do not intend to participate. Please respond to this email.*

It appears that, because I am unable to participate (even though I intended to), I must preemptively withdraw what would have been my request for a hearing.

I'm truly disappointed because I believe I have relevant insights and experiences that would contribute to fruitful negotiations, but I must admit that I am somewhat pessimistic that the outcome of these negotiations will be what NMED is hoping for. I do look forward to learning how the negotiations went, and the final outcome of this AIM.

Thank you for the opportunity to submit these comments for the record. I completely understand that you have been inundated with public comments, but please feel free to contact me if you have any questions.

Sincerely,



Steve Zappe
Santa Fe, New Mexico