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Comments On The NMED Draft Agency-Initiated Hazardous Waste Facility Permit Modification (AIM) for the Waste Isolation Pilot Plant (WIPP)

DOE has ignored its responsibilities and the legal requirements of the WIPP Renewal Permit for far too long. They have had more than two decades to characterize and move Legacy Waste from Los Alamos National Laboratory (LANL) to WIPP. Though we were promised that if we allowed WIPP to be sited in our state that it would be used for disposal of our own Legacy Waste, relatively little of that waste has been moved to WIPP. Instead, it seems that almost every other site is prioritized above LANL. This must stop now.

I commend NMED for truly looking out for the health, property, and environmental needs of New Mexicans—especially northern New Mexicans—with this Agency-Initiated Modification. Clearly DOE and LANL will never put us first. Nor will they live up to their obligations unless they are forced to do so. Thank you NMED, for this modification.

I support the main proposed changes in the Draft Permit Modification:

1. From January 1, 2027 through December 31, 2031, at least 55% of the total volume of all waste emplaced at WIPP from all generator/storage sites must be LANL Legacy Waste.
2. Beginning January 1, 2032, and until all LANL Legacy Waste has been emplaced at WIPP, LANL Legacy Waste must be at least 75% of the total volume of waste emplaced from all generator/storage sites.
3. Legacy waste currently stored above-ground at LANL Material Disposal Area-G shall be shipped and emplaced at WIPP by July 1, 2028.
4. If at any point any of those conditions are not met, all generator/storage site shipments (with the exception of LANL) must cease until all deficiencies are cured.
5. An annual report, due by April 30 of each year, for each generator/storage site and for both legacy and non-Legacy Waste, shall detail information needed to demonstrate prioritization of LANL Legacy Waste and compliance with the requirements of this Permit section.

I believe it is possible to dispose the above-ground waste in WIPP by July 1, 2028.

However, I believe the Modification doesn't go far enough.

1. **Above Ground Waste:** Instead of moving the above-ground Legacy Waste to WIPP in a timely manner, including approximately 2500 drums of plutonium-contaminated waste that has been languishing in tents in a major wildfire zone for decades,¹ DOE has started their new pit-production program at LANL—putting all their resources into this un-needed program while cutting funding and personnel to LANL's waste programs, which are in critical need.

Frankly, one might wonder about the analytic ability and even the basic understanding of LANL and DOE decision-makers who decided that siting this major new nuclear program—which could last four generations or more—in the middle of a major wildfire zone, on the side of a semi-active volcano, and with an administration and workforce that has an abysmal safety record, was a good idea. But this fits in perfectly with their idea just to ignore the drums in the tents and, with their usual magical thinking, to pretend that the next wildfire or quake won't affect Area G.

Unfortunately, though needed, I believe an annual report will not be enough. **In addition to the report, LANL must be able to demonstrate now² that they will be able to safely meet the July 1, 2028 date for above-ground waste.** If they can't, all shipping to WIPP must stop until they can show that they have an approve plan and can, indeed, make the date.

DOE must pay for dedicated NMED personnel to oversee this process and help them create their plan and then implement it safely. And as described below, penalties must be tied to **preparing the waste** as well as to **shipping the waste** for this modification to be effective.

This is because we cannot wait for two years and then have DOE say, sorry we won't make the date. They must be moving along with waste preparation ASAP and continuously until the waste is gone. **Every fire season, including this year's season, could be the season when those tents burn.**

There is a sense of urgency to moving the 2500 drums because this isn't even a low probability, high consequence event. This risk has at least a *moderate* probability that those 2500 drums will burn. **We must prioritize moving this waste even more**, moving it off the Hill and down to WIPP—**particularly the drums in the tents.**³

2. **Buried Waste:** The AIM has no date for the buried waste to be gone. It just has requirements for the percentages of LANL Legacy Waste to go to WIPP on an annual basis. A date to create an

¹ Go to www.FireOnTheMountain.xyz or directly to <https://www.burythebarrels.org/copy-of-lanl-fire-map> for an interactive fire map showing the 8 major fires around LANL that burned from 1977 through 2022. Three of these fires burned over Lab property.

² “Now” throughout these comments means a date to be determined but as soon as possible after approval of this AIM or other permit requirement.

³ The 2500 drums in tents are not the only above-ground waste. For instance, perhaps more difficult to cleanup are the 110 tons of depleted uranium that were exploded over the mesa top during above-ground testing. 10% or 11 tons were “particalized,” mixing with the soil and taken up by trees and vegetation. Some may already have gone up in the smoke of the Cerro Grande fire.

inventory of buried LANL waste is needed. I follow *Nuclear Watch New Mexico's* suggested January 1, 2029 date as the required date to have completed this below-ground inventory.

After the inventory has been completed, DOE/LANL need to create an acceptable schedule of how they will prepare and process this buried Legacy Waste and when it will be disposed in WIPP. They must also show how this schedule fits into and meets the volume percentages listed above.

Again, DOE must pay for dedicated NMED personnel to oversee this process from creating the inventory until the final LANL Legacy Waste is entombed at WIPP. And as described below, **safety must be prioritized and penalties and bonuses must be tied to preparing the waste as well as to shipping** the waste for this modification to be effective.

3. Using not only the shipping rates to WIPP, but **also LANL's planning and progress in preparing the waste to ship as triggers to stop other shipping is important.** This should be tied into all the above percentages and to both above-ground and buried Legacy Waste. There must be shipping penalties if they slack off. The penalties guarantee that they will keep up with prioritizing LANL. **Without penalties tied to preparation as well as to shipping rates, LANL will just ignore the AIM as they have done with so many requirements before.** Then suddenly July 2028 will be here and they will still be unprepared to get the rest of the waste to WIPP.

This approach will require DOE to pay for additional dedicated NMED personnel to oversee LANL's efforts both during the "proving" and inventory stages and during the actual "work" and emplacement phases for above-ground and buried waste. NMED personnel are needed both **to encourage and facilitate progress** but more importantly, **to monitor and prioritize safety.** When LANL gets bonuses for speed and meeting milestones, they make mistakes like the cat litter debacle. The bonus for safety must always be more than the bonus for speed and NMED must monitor LANL closely. However, they also have to keep moving along. Getting the right mix of how to tie preparation and shipping together with penalties and bonuses is complicated.

The changes to the modification that I've proposed, particularly tying penalties (and bonuses) to **getting the waste ready to ship** as well as to **shipping percentages** will need to be fleshed out and incorporated into the AIM—perhaps by NMED or perhaps during a hearing or during pre-hearing negotiations. Therefore, I request a hearing and pre-hearing negotiations.

Sincerely,
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