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Submitted via email to: HWB-WIPP-Comment@env.nm.gov

Ms. McLean:

The State of Idaho has reviewed the draft revised Hazardous Waste Facility Permit (“Permit”) for the Waste Isolation Pilot Plant (“WIPP”), per the Public Notice issued on April 23, 2026, by the New Mexico Environment Department (“NMED”). Idaho appreciates the opportunity to comment.

As your office is aware, Idaho hosts the Idaho National Laboratory (“INL”), a Department of Energy (“DOE”) site and the nation’s nuclear energy laboratory. Like many other DOE sites, INL ships transuranic (“TRU”) waste to WIPP for permanent disposal. Idaho also has unique legal agreements with DOE regarding the disposal of that waste. Based on Idaho’s important interests in WIPP, the State provides the following comments.

1. *Comment on the impact of Part 4, Section 4.2.1.4 on Idaho agreements.*

In 1995, the State of Idaho negotiated the Idaho Settlement Agreement (“ISA”), which settled ongoing federal litigation between Idaho and DOE. The ISA was a historic, one-of-a-kind agreement that gave Idaho important assurances for the clean-up and ultimate removal of nuclear waste at INL. The ISA was presented with a Consent Order to the U.S. District Court, and the Court has continuing jurisdiction.

Specifically, the ISA outlines key environmental protections and waste removal milestones in Idaho by restricting the intake of spent fuel for treatment and interim storage, with plans for its permanent disposal outside the state. Certain provisions of the ISA have been renegotiated since the ISA was first executed and lodged with the Court, demonstrating that Idaho values the success of INL and its continuing relationship with DOE.

In 2019, Idaho negotiated one such addendum: the 2019 Supplemental Agreement. In the Supplemental Agreement, Idaho granted DOE a one-time waiver of ISA Section D.2.e, which is a prohibition on the shipment of commercial spent nuclear fuel to Idaho, and a one-time waiver of the State's invocation of Section K.1, which prohibits shipments of spent nuclear fuel to INL when DOE is in non-compliance of the ISA and related agreements, in exchange for additional clean-up obligations by DOE. Among other things, DOE agreed to certain requirements for shipments of TRU waste to WIPP. In part, DOE agreed as follows: "...DOE will allocate to and make from the State of Idaho at least fifty-five percent (55%) of all transuranic waste shipments received at WIPP for INL transuranic waste, including retrieved buried waste, each year until shipments from INL are complete." In addition, "DOE will give INL transuranic waste priority for shipments to WIPP." To date, DOE has met this commitment, allowing DOE to bring in critical spent fuel to Idaho for research and testing.

However, NMED's draft permit includes the following language in Part 4, Section 4.2.1.4:

- i. From January 1, 2027 through December 31, 2031, the Permittees shall emplace legacy waste from Los Alamos National Laboratory (LANL) such that LANL emplaced legacy waste is at least 55% of the total volume of waste emplaced from all generator/storage sites as calculated on a rolling monthly average based on the prior 12 consecutive months.
- ii. Beginning January 1, 2032, and until all LANL legacy waste has been emplaced at WIPP, the Permittees shall emplace legacy waste from LANL such that LANL emplaced legacy waste is at least 75% of the total volume of waste emplaced from all generator/storage sites as calculated on a rolling monthly average based on the prior 12 consecutive months.

While NMED may believe that DOE could simultaneously make 55% of TRU *shipments* from INL to WIPP *and* 55% (and then 75%) of the *volume* of TRU from LANL to WIPP, that would be grossly inefficient, if it occurred at all. In reality, Idaho put requirements for shipments from INL to WIPP to reduce the *volume* of TRU waste in Idaho.

The permit provisions cited above severely jeopardize DOE's ability to comply with the ISA and the Supplemental Agreement. DOE's breach of these agreements would have serious repercussions.

NMED must reconsider these permit conditions given the impact on an existing, legally binding agreement between a state and DOE.

2. Comment on Part 1, Section 1.5.23 Projected Waste and Section 1.5.24 Legacy Waste.

The definition of "Projected Waste" includes decontamination and decommissioning (D&D) waste that has not yet been packaged, as well as waste from ongoing projects, etc. The definition of "Legacy Waste" includes TRU waste without a "Projected Waste" component. This appears to exclude TRU waste derived from CERCLA D&D cleanup efforts across the complex which has not yet been packaged from being classified as "Legacy Waste".

It is not clear what impact the combination of these two definitions has with respect to WIPP disposal of TRU waste derived from D&D activities associated with weapons production facilities, including some types of off-site TRU waste streams if brought to INL for ongoing future resizing and repackaging activities.

Please revise these two definitions to clarify what the disposal pathway is for such D&D waste in the WIPP facility, without the need for specific state agency adopted definitions which may not be consistent across the DOE complex.

A significant portion of TRU waste on site at INL was not generated at INL. INL has been prolific in finding ways to process TRU waste from many different generator sites around the DOE complex, including LANL. Idaho wants to ensure that TRU waste sent to INL for processing from other generator sites will maintain designation as waste originating from those generator sites throughout processing at INL for ultimate disposal at WIPP or removal from the State of Idaho. For instance, if LANL Waste Stream LA-MHD01.001 is to be processed at the Advanced Mixed Waste Treatment Project (AMWTP) at INL, it should remain LANL waste that would not count against Idaho's allotted annual shipments to WIPP.

3. Removal of proposed permit Section 1.5.24.vi.

The State of Idaho requests the removal of proposed permit Section 1.5.24.vi. This section states: "If at any point any of the conditions required in this section are not met, all generator/storage site shipments (with the exception of LANL) must cease until all under-deliveries are cured."

Because WIPP is the nation's only geologic repository for defense-related TRU waste, this proposed condition could create significant negative impacts for generator sites in other states. These impacts may include extended on-site storage of waste, potential noncompliance with existing agreements, delays in environmental cleanup progress, and operational challenges.

Delays in the characterization, packaging, or certification of LANL waste should not trigger a cessation of shipments from other sites that have certified waste ready for disposal. As a critical national resource within the TRU program, WIPP should remain accessible to all generator sites, and it would be unreasonable to suspend nationwide shipments solely due to schedule delays at a single facility.

Under the proposed permit Section 1.5.24.vi., a delay in LANL shipments to WIPP could result in TRU waste sent from outside generator sites for processing at INL to be in violation of the INL Site Treatment Plan (STP) and/or the ISA. The Waste Treatment Plan for LANL Waste Stream LA-MHD01.001 will have to be assessed for compliance with the requirements of the AMWTP Permit Condition II.B, Receipt of Off-Site Mixed Waste, STP Rev. 52 Section 2.4.4 Inclusion of New Mixed Waste Streams, as well as terms of the ISA. Any transuranic waste received from another site for treatment at INL that is not shipped outside of Idaho for storage or disposal within six months following treatment will result in a violation of the ISA. A violation of the ISA allows the State of Idaho to invoke Section K. 1—ceasing all shipments of DOE spent fuel to INL.

Idaho has been at the forefront of TRU waste processing, certification, and preparation for shipment to WIPP and the DOE complex. Idaho would like to continue this collaborative progress into the future.

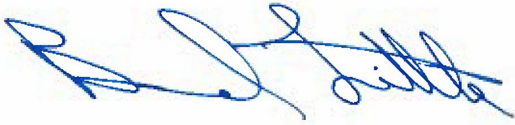
4. Request for Further Discussion.

The State of Idaho appreciates NMED's outreach efforts and the conversations regarding this important permitting action. Idaho is open to additional discussion, to the extent there is an opportunity to find a more acceptable path forward. Such a path forward would address the issues identified in this letter. Additional conversations should include representatives of the Idaho Department of Environmental Quality, the Idaho Governor's Office, and the Idaho Attorney General's Office.

5. *Request for a Public Hearing.*

Based upon the reasons stated above in comments 1-3, Idaho specifically requests a public hearing.

Sincerely,



BRAD LITTLE
Governor of Idaho



RAÚL LABRADOR
Attorney General of Idaho