



June 21, 2026

Mr. John David Nance, Chief
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NM Environment Department
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By electronic mail through
New Mexico Environment Department portal
with copies to:

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Re: Agency Initiated Modification for New Mexico Hazardous Waste Act permit
for the Waste Isolation Pilot Plant

Dear Mr. Nance and Ms. McLean:

I write for Conservation Voters New Mexico to comment on the New Mexico Environment Department Hazardous Waste Bureau's Agency Initiated Modification of the New Mexico Hazardous Waste Act Permit for the Waste Isolation Pilot Plant, and to request a hearing on that Agency Initiated Modification.

As is indicated in these comments, Conservation Voters New Mexico agrees with the Agency Initiated Modification's provisions establishing a schedule for the disposal of legacy waste from clean up at Los Alamos National Laboratory. On the other hand, however, Conservation Voters New Mexico believes that the Agency Initiated Modification's proposed definition of "legacy waste" is incomplete, and Conservation Voters New Mexico is therefore requesting a hearing focused on that definition.

In any hearing or negotiations concerning the Agency Initiated Modification of the New Mexico Hazardous Waste Act Permit for the Waste Isolation Pilot Plant, Conservation Voters New Mexico will be represented by Douglas Meiklejohn.

I would appreciate it if you would acknowledge that you have received these comments and this request for a hearing.

Introduction

Conservation Voters New Mexico (“CVNM”) is a statewide non-profit non-partisan organization that values responsible stewardship of New Mexico’s air, water, land, and other natural resources. CVNM believes that ecological health and social equity among New Mexico’s diverse and culturally rich communities protect the quality of life of our state’s residents. CVNM is dedicated to ensuring democratic accountability and access for all New Mexicans in decision making at all levels of government. CVNM supports policies that promote long-term ecological and economic sustainability. This is CVNM’s responsibility to future generations.

CVNM has a compelling interest in the Waste Isolation Pilot Plant (“WIPP”) because of CVNM’s work to protect New Mexico’s communities and environment, including communities and environments that are impacted by the Los Alamos National Laboratory (“LANL”), which sends waste to WIPP, as well as the communities and environment on routes by which waste is shipped to WIPP, and the communities and environment surrounding WIPP.

I. CVNM’s concerns about the Agency Initiated Modification of the New Mexico Hazardous Waste Act Permit for WIPP are based on WIPP’s impact on New Mexico communities and environment.

CVNM is concerned about the Agency Initiated Modification (“AIM”) of the New Mexico Hazardous Waste Act Permit (“the Permit”) for several reasons, including but not necessarily limited to the following:

- First, the Permit governs removal of TRU Waste, including legacy TRU Waste, from LANL, which is surrounded by New Mexico communities, including several Pueblo Nations;

- Second, the Permit affects the transport of TRU Waste, including legacy TRU Waste, to WIPP through New Mexico communities, including the communities that surround LANL;
- Third, the existence and operation of WIPP pose risks to the New Mexico communities that surround WIPP;
- Finally, decisions that are made about WIPP, including decisions about the disposal in WIPP of legacy TRU Waste, are both technical and political decisions that should reflect the concerns of New Mexico communities and the residents of those communities.

II. The AIM of the WIPP Permit’s definition of “legacy waste” is not adequate.

The AIM of the WIPP Permit defines both “Projected Waste” and “Legacy Waste” but although the definition of “Projected Waste” contains a cutoff date,¹ there is no such cutoff date for the definition of “Legacy Waste”. Instead, the AIM definition of “Legacy Waste” states simply that:

“Legacy Waste” means waste placed in retrievable storage that is part of a TRU or TRU mixed waste stream without a projected waste component. This definition applies to all generator/storage sites except those with state agency adopted site specific “legacy waste” definitions, in which case the respective state agency adopted definition applies.

AIM of WIPP Permit, page 9.

The problem with this definition is that for generator/storage sites subject to state agency adopted definitions of “legacy waste”, this definition does not provide a date by which waste must have been generated in order to be classified as “legacy waste.” This is not appropriate because the word “legacy” – used here as an

¹ The AIM of the WIPP Permit defines “TRU Waste in projected streams” as including “waste from programs that have not come on-line as of the data cutoff date for the 2025 ATWIR report, as well as waste from ongoing projects and decontamination and decommissioning (D&D) waste that has not been packaged.” AIM for WIPP Permit, page 9.

adjective modifying the word “waste” – means “of, relating to, associated with, or carried over from an earlier time, technology, business, etc.”²

However, according to this definition, waste subject to a state agency definition of “legacy waste” could have been generated at any time in the past, or could be generated in the present or even in the future depending upon the terms of the applicable state agency’s definition. Moreover, it is not clear what happens if the applicable state agency adopts a definition, or changes an existing definition, after the AIM for the WIPP Permit is approved. For these reasons, the AIM of the WIPP Permit should provide a cut-off date by which the waste must have been generated in order for the waste to be classified as “legacy waste”.

Because “legacy waste” is to be disposed of in WIPP, the AIM of the WIPP Permit should include in the definition of “legacy waste” a date that is related to WIPP. WIPP was opened in 1999, and the following definition of “legacy waste” – including the underlined language – would therefore would be appropriate:

“Legacy Waste” means waste generated and managed as TRU waste by 1999, and placed in retrievable storage that is part of a TRU or TRU mixed waste stream without a projected waste component. This definition applies to all generator/storage sites.

III. The prioritization of disposal of “legacy waste” in sections 4.2.1.4 and 4.2.1.5 if the AIM of the WIPP Permit is appropriate.

Sections 4.2.1.4 and 4.2.1.5 of the AIM of the WIPP Permit make clear that priority is to be given to disposal in WIPP of legacy waste from clean up activities at LANL. This is appropriate because of the representations made to the residents of New Mexico that led to the State’s agreement to allow WIPP to be constructed and to operate. Those representations included a schedule for the operation of WIPP and the closure of WIPP after its operation for 25 years were made in several documents.

A. The WIPP Land Withdrawal Act.

First, the federal Land Withdrawal Act, which authorized WIPP initially, provided for the decommissioning of WIPP. It stated:

² Merriam-Webster.com/dictionary/legacy#dictionary-entry-2 (accessed on 6-20-26).

Decommissioning of WIPP

The Secretary shall develop a plan for the management and use of the Withdrawal following the decommissioning of WIPP or the termination of the land withdrawal. The Secretary shall consult with the Secretary of the Interior and the State [of New Mexico] in the preparation of such plan and shall submit such plan to the Congress.

Waste Isolation Pilot Plant Land Withdrawal Act (Public Law 102-579), section 13.

B. The Consultation and Cooperation Agreement

Second, the Consultation and Cooperation Agreement between the State of New Mexico and the U.S. Department of Energy also clearly contemplated that WIPP would cease operations at some point in the future. Article VII of the Agreement lists 17 Key Events concerning WIPP, and the 17th Key Event is the Decontamination and Decommissioning of WIPP.

C. The initial permit issued for WIPP.

Finally, the initial permit for WIPP issued by the New Mexico Environment Department pursuant to the federal Resource and Recovery Act as implemented by the New Mexico Hazardous Waste Act indicates that the operation and closure of WIPP shall take a total of 35 years. Section I-1d of that permit states:

I-1d Schedule for Closure

For the purpose of establishing a schedule for closure, an operating and closure period of no more than thirty-five (35) years (twenty-five (25) years for disposal operations and ten (10) years for closure) is assumed. This operating period may be extended or shortened depending on a number of factors, including the rate of waste approved for shipment to the WIPP facility and the schedules of TRU mixed waste generator sites, and future decommissioning activities.

WIPP Hazardous Waste Facility Permit, section I-1d.

Thus, the State of New Mexico's acceptance of the WIPP facility and New Mexico's issuance of a State Hazardous Waste Act permit for WIPP were both based on the understanding that WIPP would be a pilot project (as its name implies)

and that it would only operate for a limited amount of time. Specifically, WIPP was supposed to operate for 25 years and closure of the facility was supposed to take 10 years. Because WIPP opened in 1999, this schedule called for it to operate until 2024, when closure of the facility would begin.

Unfortunately that has not happened, and the U.S. Department of Energy has now indicated that it intends to keep WIPP open until at least 2083. The New Mexico Environment Department may not be able to prevent that, at least until the time comes to renew the Hazardous Waste Act Permit for WIPP. However, the Environment Department can and must address the U.S. Department of Energy's obligation to clean up the legacy waste at LANL, which was a central point in the State of New Mexico's agreement to host the WIPP facility.

For that reason, the schedules and requirements outlined in the proposed AIM of the State Hazardous Waste Act Permit for WIPP at pages 6-7 of the AIM for the Permit are both appropriate and necessary. It is apparent, based on the Department of Energy's past performance, that the Department of Energy feels no obligation to live up to the representations that it made to the residents of New Mexico that acceptance of the WIPP facility would lead to clean up of the waste – including legacy waste – at LANL in 25 years. Thus, it is both appropriate and necessary for the Environment Department to mandate those requirements in the AIM for the WIPP Permit.

Conclusion

The Environment Department should include in the AIM of the WIPP Permit a cut-off date of 1999 by which waste must have been generated to be “legacy waste”. The Environment Department also should continue to include in the AIM of the WIPP Permit the proposed schedule for disposal of legacy waste in order to require the Department of Energy to fulfill its obligations to the residents of New Mexico addressing clean up of legacy waste at LANL.

Thank you for your consideration of these comments.

Dated: June 21, 2026

/s/ Douglas Meiklejohn

Douglas Meiklejohn, Attorney

Water Quality & Land Restoration Advocate

Conservation Voters New Mexico