

**U.S. Department of Energy, Savannah River Operations Office Comments  
on the New Mexico Environment Department  
Draft Agency Initiated Modification  
of the Waste Isolation Pilot Plant Permit**

**1. Public Hearing Should Be Held**

The U.S. Department of Energy (DOE), Savannah River Operations Office (SROO) opposes the New Mexico Environment Department's (NMED) Agency Initiated Modification (AIM) draft Waste Isolation Pilot Plant (WIPP) Permit, and a public hearing is requested. SROO requests that the AIM/Draft Permit be rescinded.

**2. Legacy Waste Definition in Draft Permit Part 1, Section 1.5.24 Should Be Removed**

Adding a definition for legacy waste is not needed, not required, not currently used, and will cost taxpayers more for no added protection or benefit.

Addition of a legacy waste definition has no regulatory basis and results in unnecessary impacts to the DOE complex, while providing no enhancement of ability for the WIPP site to comply with the Resource Conservation and Recovery Act (RCRA) or protect human health and the environment. The purpose of WIPP through the Land Withdrawal Act (LWA) is to provide a safe place to receive, handle, and permanently dispose of Transuranic Waste (TRU) from across the DOE complex. There should be no added definitions other than those currently being utilized from the LWA and DOE Order 435.1, Radioactive Waste which governs the operation. The important element of the waste is the radiological content and hazardous waste content consistent with DOE Order 435.1, to minimize the potential impact on site workers, local communities, and the environment. WIPP is a national asset and should not be restricted from its purpose with arbitrary definitions not supporting its DOE complex mission. Generator sites, including the Savannah River Site, need to continue with their current program approaches and should not be managed by a separate conflicting definition that could significantly impact the priority for shipping waste to WIPP.

A "legacy waste" definition would likely become an unnecessary burden as it would seemingly be added in both the WIPP waste inventory system and WIPP Data System (WWIS/WDS). The data entered in WWIS/WDS should match those at the generator sites which currently do not contain a common "legacy waste" definition. This is because RCRA contains no requirement for a definition of "legacy waste" and there has never been a need. The additional task will likely add time as TRU containers are certified individually to meet the WIPP criteria (e.g., WAC/WAP). The generator sites would have to perform periodic verifications to ensure all the containers continue to have the appropriate identifier as they go through any repackaging. For those sites who utilize outside contractor verification services, it would also need to be added to their respective scope to ensure there are no changes or

have the container mis-identified. For the generator sites who are working multiple waste streams and many containers, this definition change would also likely significantly impact the cost per container at no added value to the taxpayer.

**3. Requirements to Prioritize LANL Shipments by Percentage in Years 2027-2031 and 2032 until LANL legacy waste has been emplaced in Draft Permit Part 4, Section 4.2.1.4 is not aligned with WIPP Mission to Support DOE/EM Complex and Should be Removed**

Establishing LANL (Los Alamos National Laboratory) as priority at 55% (from 2027 - 2031) and then at 75% from 2032 – until LANL waste is emplaced, is poor use of the taxpayer dollars and is an injustice to the other generator sites given the intended mission of WIPP as a national asset for the DOE complex. This will add additional decades of waste management at the generator sites, increasing the risk to the site workers, community, and the environment. Priority of shipments needs to remain controlled by the National Asset Authority, DOE Carlsbad Field Office (CBFO), with no restrictions from the state.

Making LANL a priority as described in the proposed permit modification does not support the mission of WIPP as a national asset to support the DOE/Environmental Management (EM) Complex. The DOE/EM Complex waste generation and preparation is tied to the mission of reducing risk for the site workers, communities, and the environment. Potential delays while waiting for shipment present an unacceptable risk associated with waste that is already prepared and certified for disposal at WIPP. LANL's prioritization should remain in the control of DOE to avoid disruptions and limitations on the rest of the Nation's access to the WIPP for the next decade.

CBFO in coordination with generator/storage sites has the responsibility and authority to schedule and ship the waste to WIPP. The coordinated effort by CBFO with the generator sites produces the most efficient use of resources to utilize the national asset and get the waste to WIPP. The prepared (i.e., certified) waste inventory at each site is coordinated and planned to ensure the tractors, trailers, packages, and the drivers are all in sync for an efficient process. If LANL becomes a priority at the proposed values (55% from 2027 – 2031 and then at 75% from 2032 – 2035), it would impose a significant constraint and reduction of projected shipments from the remaining generator sites including Savannah River during that time period.

Key generator sites with likely impacts are Savannah River, Hanford, Idaho, Oak Ridge, and a few other small generator sites. Based on rough estimates under the proposed permit modification, a significant backlog of more than 2500 shipments could be created for these sites from 2027 to 2035 to accommodate shipment from LANL.

#### **4. Prioritizing LANL Through this WIPP Permit Modification Affects the Nationwide DOE/EM Complex and is Not Appropriate**

The strategy to prioritize LANL by imposing unnecessary restrictions on the WIPP national asset serving communities across the country is misguided.

New Mexico's interest in LANL waste prioritization is understandable from the perspective of the state hosting the WIPP national asset. However, the strategy to prioritize LANL by undercutting the rest of the country and imposing unnecessary restrictions on the WIPP national asset is misguided and increases risk to human health and the environment across the nation.

#### **5. This Permit Modification Negatively Impacts DOE/EM Generator Sites Nationwide**

Other DOE generator sites appropriately have legal agreements and commitments established with the respective states (e.g., South Carolina, Idaho, Tennessee, Washington), not with WIPP. NMED's unilateral changes will likely create a need for the generator sites to potentially renegotiate and/or substantially revise legal commitments and explain impacts to surrounding communities, states, and other stakeholders. The permit modification proposed by NMED will be detrimental to EM and NNSA operations at Savannah River Site (SRS) and relationships for the following reasons:

- Implementation of the permit modification will adversely affect cleanup activities related to processes at SRS at H-Canyon and HB-line facility. There are waste streams generated by the processes needed to support these presidential priorities which may include TRU waste for disposal at WIPP. The implementation of the permit modification significantly limits DOE's options for disposition of this waste and will require long term storage of waste and capacity issues.
- Changes to definitions and limitations on legacy versus newly generated waste, as well as potential impacts to disposal availability, would necessitate a reevaluation of the SRS Site Treatment Plan (STP).
- There are currently no specific commitments for TRU shipments under the STP because WIPP is available as a disposal facility. If WIPP is no longer available for disposal or is available at a reduced shipping level due to prioritization of LANL legacy waste, a compliance schedule would be required to be established between DOE and South Carolina Department of Environmental Services (SCDES). This will result in additional regulatory and legal concerns/commitments as well as increased costs.
- Storage issues and restrictions on SRS's ability to fulfill its plutonium management mission will occur if regular shipments from SRS to WIPP are curtailed due to a lack of

shippable “legacy” containers at LANL. This will result in higher volumes of expected TRU waste shipments or additional international requirements during the period when LANL shipping is prioritized. This will worsen storage and capacity issues and will restrict SRS’s ability to fulfill its mission.

- Slowing SRS shipments to WIPP will require longer storage durations at SRS. This will necessitate the need for additional resources for container management. Additionally, longer storage impacts personnel safety and will expose staff to higher dose rate containers and SRS may reach the maximum radionuclide inventory for storage, as allowed by the approved documented safety analysis.
- SRS has a collaborative and transparent relationship with its regulators and other stakeholders. The proposed NMED permit requirements related to TRU waste shipments, will lead to strained relations between SRS and SCDES that could negatively impact future SRS missions. Additionally, the imposition of a new “legacy” TRU waste definition that differs from prior SRS communications will lead to confusion and mistrust regarding SRS operations.
- Many negotiations with the regulators regarding SRS missions are premised on the availability of WIPP to accept shipments. If SRS cannot continue TRU waste shipments to WIPP, SCDES may limit future permitted mixed TRU waste storage capacity to compel SRS to resume shipments.
- Shipping limitations for other generator/storage sites will create new “legacy” TRU waste streams. SRS missions that produce TRU waste will be required to plan for extended storage durations and increased storage capacity, which will result in higher program costs and mission extensions.
- Implementation of the permit modification will adversely affect the current path for disposal of waste and proposed three-year storage limit for TRU waste outlined in the pending SRPPF RCRA permit application.
- Hot operations at SRPPF (a Presidential priority and statutory mandate) coincide with LANL’s legacy waste increasing to 75% of WIPP waste emplacement per the Draft Permit Part 4, Section 4.2.1.4. This will reduce the ability of SRPPF to ship TRU waste thereby limiting SRPPF production and operations. The inability of SRPPF to ship TRU waste efficiently impacts storage capacity, requiring plutonium processing to halt and negatively impacting the ability to support the nuclear deterrent.

SROO formally requests the opportunity to participate in a public hearing on the proposed modification to the WIPP permit. Additional issues may arise during the hearing, as a result of changes to permit conditions that may be proposed by NMED, issues raised by other parties, or otherwise. As such, SROO expressly reserves, and does not waive, their right to present additional or different legal arguments as changes and new issues arise during the hearing. SROO further expressly reserve, and does not waive, each of the following rights: (1) to present evidence and legal arguments on all of these issues during the public hearing and post-hearing procedures; (2) to further seek to resolve these issues during and following the hearing; (3) to make a full administrative record for any appeals that might follow the public hearing; and (4) to take appeals as provided by law and to seek any other available legal remedies in the event differences cannot be resolved.