



## **SOUTHWEST RESEARCH AND INFORMATION CENTER**

**P.O. Box 4524 Albuquerque, NM 87196 505-262-1862 FAX: 505-262-1864 [www.sric.org](http://www.sric.org)**

June 22, 2026

Megan McLean, WIPP Program Manager via Public Comment Portal:  
Hazardous Waste Bureau – NMED <https://nmed.commentinput.com/?id=x2V7G3HrWN>  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, NM 87505-6303

RE: Request for Hearing and AIM Comments

Dear Megan,

Southwest Research and Information Center (“SRIC”), which has been extensively involved in the WIPP Permitting process for more than 30 years, provides these comments on the agency-initiated modification (“AIM”) draft Permit [Public Notice AR 260420]. The comments provide a basis for SRIC’s **request for a hearing** and to facilitate the negotiation process. 20.4.1.901. A.4 NMAC. SRIC notes that the Administrative Record (AR) for this action identified in the Fact Sheet [AR 260421] includes some previous SRIC submissions [AR 240404, 250103, 251209, and 260303], which must be considered as part of these SRIC comments. In addition, SRIC specifically incorporates its April 19, 2023 Comments on the WIPP Renewal Permit [AR 230425.245] because the comments provide several pages of Relevant Background and some of the specific Permit language that is being addressed in the draft Permit.

SRIC strongly agrees that “there is sufficient basis for the development of this agency-initiated modification that clarifies the priority to emplace legacy waste and reduces the risk of Los Alamos National Laboratory legacy waste during the current permit term.” [AR 260418]. SRIC supports some provisions of the draft Permit and opposes others, and provides improvements.

### I. Brief Relevant Background

SRIC was very appreciative of the participants, especially including the Permittees, in the negotiations in June 2023 on the Renewal Permit coming to agreement and said so publicly on numerous occasions. SRIC also consistently stated the importance of the Permittees complying with the key provisions and for NMED to enforce those provisions. However, as the AR submissions above reiterate, the Permittees have not adequately complied with the provisions related to waste prioritization (Section 4.2.1.4), legacy waste (Section 4.2.1.5), and the need for a repository in another state (Section 2.14.3). Thus, SRIC has repeatedly urged NMED to take enforcement or other action. While the AIM draft Permit is not specifically what SRIC has suggested, it is consistent with what SRIC and many others have requested. The Permittees are well aware of those suggestions, as they have received the submissions, as well as others made directly to them.

## II. Draft Permit Provisions

1. “Rebuttable Presumption” Permit Section 1.5  
SRIC does not object to the draft Permit language.

2. Definitions of “Projected Waste” and “Legacy Waste” Permit Sections 1.5.23 and 24  
SRIC previously provided a specific definition of legacy waste, which we still support:

Legacy TRU and Legacy TRU mixed waste is defense-related TRU waste generated from defense activities and managed as TRU waste as of 1999, when WIPP opened. Any waste or material that does not meet that definition is “non-legacy” waste. [AR 250103]

SRIC continues to believe that its definition is technically based, clear, and enforceable, and supports that language to be included in the Permit. If more specificity is desired, “opened” and can be deleted and “operations began” added. Permit Attachment A-1.

The draft Permit definitions in 1.5.23 and 1.5.24 are not so clear to the public, as they use language similar to that in the Annual Transuranic Waste Inventory Report (“ATWIR”), which is not familiar to many members of the public, though SRIC has closely reviewed the document each year.

The definition in 1.5.23 closely follows that in the 2025 ATWIR [AR 260105],<sup>1</sup> which the Department of Energy (“DOE”) Carlsbad Field Office (“CBFO”) created and approved.<sup>2</sup> However, that definition is not necessary if the SRIC legacy waste definition is adopted.

The definition in 1.5.24 is not precise as it could be and could be subject to perpetual change, which is not appropriate, desirable, nor adequately enforceable. The first sentence contains undefined terms, is unduly broad, and could allow for waste that is not and should not be considered legacy waste. For example, the definition does not exclude “potential” waste in the 2025 ATWIR, Appendix B, which DOE does not currently consider to meet WIPP eligibility requirements. Appendix B includes waste streams with no “projected waste,” which would be allowed under the proposed “legacy waste” definition. Appendix B also includes nine waste streams at the West Valley, NY site, which should not be approved for shipment to, or emplacement at WIPP.<sup>3,4</sup> The

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<sup>1</sup> at 48.

<sup>2</sup> *Id.* at 3.

<sup>3</sup> This matter was extensively discussed in 2003 West Valley Demonstration Project (“WVDP”) Final Waste Management Environmental Impact Statement and in the 2004 comments by SRIC (<https://archives.sric.org/nuclear/docs/DOE012304.php>) and letter from then-Senator Jeff Bingaman. (<https://sric.org/wp-content/uploads/2025/05/Bingaman020604.pdf>). In the DOE’s 2005 Record of Decision, citing SRIC’s comments, DOE deferred a decision regarding TRU waste disposal at WIPP. (<https://www.energy.gov/nepa/articles/eis-0337-record-decision> at 35076).

<sup>4</sup> SRIC appreciates the NYSERDA comments of June 8, 2026 and fully supports public discussion about the status of transuranic waste at the WVDP. ATWIR-2025, Appendix B includes 565.5 m<sup>3</sup> of “Potential” waste at WVDP, while the NYSERDA letter states that there are “approximately 609 cubic meters of TRU waste.” SRIC also notes

second sentence provides no time constraint on the “state agency adopted definition,” so it could be adopted or changed at later date(s) by such a state agency. In addition, there should be a clear definition of non-legacy waste, especially since the term “non-legacy waste” is included in Part 4.

If SRIC’s legacy waste definition is not adopted, SRIC would support the following revision (deletion in green):

#### 1.5.24 Legacy Waste

“Legacy Waste” means waste ~~placed in retrievable storage~~ that is part of a TRU or TRU mixed waste stream without a projected waste component **in Appendix A of the 2025 ATWIR report**. This definition applies to all generator/storage sites except those with state agency adopted site specific ‘legacy waste’ definition **as of December 31, 2026**, in which case the respective state agency adopted definition applies. **Any waste or material that is not “legacy waste” is “non-legacy” waste.**

### 3. Prioritization and Risk Reduction of New Mexico Waste Permit Section 4.2.1.4

#### A. Additional Prioritization language is needed.

SRIC agrees that the WIPP Permit is an appropriate location for the prioritization requirements and all parties, including the Permittees, supported the existing Part 4.2.1.4 in the 2023 Renewal Permit. Because the Permittees have not complied with the letter and spirit of the prioritization requirement, it is necessary to include specific requirements, such as those in the draft Permit.

The documented shipments and amounts of LANL waste shipped to and emplaced at WIPP since the June 2023 Settlement Agreement in comparison with the amounts from other sites, especially the Idaho National Lab (“INL”), demonstrate that the Permittees have not prioritized LANL legacy waste shipments and emplacement. Additionally, the annual Performance Evaluation and Measurement Plan (“PEMP”) that provide bonus funding to SIMCO to accomplish specifically enumerated activities demonstrate a lack of priority for LANL shipments.<sup>5</sup> The FY 2023 PEMP, Performance Based Incentive (“PBI”) 1.2.B. provided:

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that WVDP contains significant amounts of high-level waste which are prohibited at WIPP by the WIPP Land Withdrawal Act, the Consultation and Cooperation Agreement, and the WIPP Permit.

<sup>5</sup> The PEMPs should be posted on the WIPP website at: <https://wipp.energy.gov/foia-simco-contract-89303322DEM00077-documents.asp>. The FY 2023 PEMP is Modification 12, which is one of two of the first 95 modifications that have been deleted. That Modification is Attachment 1 to these comments. The FY 2024 PEMP is Modification 24 - [https://wipp.energy.gov/Library/foia/SIMCO/Modifications/Modification\\_024-AddFY24PEMPtoSectionJReviseSectionsBF.pdf](https://wipp.energy.gov/Library/foia/SIMCO/Modifications/Modification_024-AddFY24PEMPtoSectionJReviseSectionsBF.pdf). The FY 2025 PEMP is Modification 49, which has also been deleted. The revised FY 2025 PEMP is Modification 65 - [https://wipp.energy.gov/Library/foia/SIMCO/Modifications/Modification\\_065-RevisiontoFY25PEMP.pdf](https://wipp.energy.gov/Library/foia/SIMCO/Modifications/Modification_065-RevisiontoFY25PEMP.pdf). The FY 2026 PEMP is Modification 80 - [https://wipp.energy.gov/Library/foia/SIMCO/Modifications/Modification\\_080-FY2026PEMPJ-3.pdf](https://wipp.energy.gov/Library/foia/SIMCO/Modifications/Modification_080-FY2026PEMPJ-3.pdf).

LANL Shipments (\$200,000) – Due to the priority and importance of shipping LANL-EM waste, the Contractor will earn an additional \$5,000.00 per shipment of LANL-EM TRU Waste for the first 40 shipments.

The FY 2024 PEMP, PBI 1.2.A.ii. provided:

Due to the priority of receiving shipments from LANL-EM, an additional \$7,000 will be earned for each of the first forty (40) shipments received from LANL-EM.

The FY 2025 PEMP, PBI 1.1.iii provided:

Due to the priority of receiving shipments from LANL, an additional \$11,527.50 will be earned for each of the first 40 shipments received from LANL. (\$461,100).

The FY 2026 PEMP, PBI 1.1.H provided:

Due to the priority of receiving waste from LANL, an additional \$12,500 will be earned for each of the first 40 shipments from LANL, by September 30, 2026. (\$500,000).

Thus, the bonus incentive funding for SIMCO for 40 LANL shipments per year has remained the same. The FY 2023 PEMP, which was revised on 5/10/23, was before the WIPP Permit Renewal Settlement Agreement in June 2023. But no increased priority was given in the three subsequent PEMPs after that Agreement. In addition to not increasing the numbers of annual shipments from LANL, the FY 2025 and FY 2026 PEMPs no longer specify that those 40 shipments are EM waste, thereby allowing non-legacy NNSA shipments to receive the bonus funding.

Those PBI milestones were surpassed by SIMCO. In FY 2023 there were 68 shipments from LANL, in FY 2024 there were 49 shipments from LANL, in FY 2025 there were 76 shipments from LANL, and in FY 2026 there were 40 shipments from LANL by March 12, 2026.<sup>6</sup>

If the Permittees were prioritizing LANL EM or legacy waste, among other things, they would have increased the number of shipments each year for which SIMCO received bonus incentive funding. If the draft Permit is approved, the FY 2027 PEMP and those in subsequent years should include PBIs to at least meet the required volumes of waste.

SRIC agrees with the deletion of the first sentence of Part 4.2.1.4 as not being needed with the revisions that follow. In addition, that sentence has not resulted in meaningful prioritization by the Permittees.

#### B. LANL legacy waste based on the AIM Part 1, Section 1.5.24 definition

In the 2025 ATWIR, the LANL waste without a projected waste component total 3,932.4 m<sup>3</sup> of CH LWA waste and 80.1 m<sup>3</sup> of RH LWA waste that would meet the legacy waste definition in Section 1.5.24.<sup>7</sup> In their “2025 TRU Mixed Waste Volume Capacity Certification” [AR 260107], the Permittees use a 1.4 conversion factor to calculate TMW volume. Using that conversion

<sup>6</sup> <https://wipp.energy.gov/WDSP/ShipCal>

<sup>7</sup> Attachment 2.

factor, the LANL TMW volume in the 2025 ATWIR is 5,505.36 m<sup>3</sup> of CH waste and 112.14 m<sup>3</sup> of RH waste.

In Permit Table 4.1.1, the amount of CH waste emplaced in Panel 8 in an average year is 5,357 m<sup>3</sup> of TMW.<sup>8</sup> If 55 percent of that volume is LANL legacy waste, 3,045 m<sup>3</sup> would be LANL legacy waste per year, and the total LANL legacy waste could be emplaced in less than two years.

In Permit Table 4.1.1, Panel 11 would operate for three years (August 2025 through July 2028), an average volume of waste emplaced of 6,250 m<sup>3</sup> per year. Panel 12 would operate for three years (July 2028 through June 2031), an average volume of waste emplaced of 6,250 m<sup>3</sup> per year. At 55 percent of the volume being LANL legacy waste, 3,437.5 m<sup>3</sup> annually would be such LANL waste.

However, in the DOE Fiscal Year 2027 Budget Request to Congress, the estimated volume of waste to be shipped WIPP is reduced to 2,200 m<sup>3</sup>. At 55 percent of that volume, LANL legacy waste would amount to 1,210 m<sup>3</sup>. At that reduced rate, it would take less than five years to emplace the total volume of LANL legacy waste.

Thus, at either the current rate in the Permit or at the planned reduced rate, the total amount of LANL legacy waste could be emplaced to meet the requirement of Part 4.2.1.4.i. In addition, in both FY 2012 and FY 2013 LANL emplaced more than 1,210 m<sup>3</sup> of TMW waste in WIPP.<sup>9</sup> So the rates required in the AIM have been achieved in the past and are reasonable. The Permittees comments in opposition to the draft Permit did not include any evidence that such emplacement rates are not achievable.

However, the Permittees apparently have plans to even further reduce the future annual shipments to WIPP to substantially prolong the duration of WIPP's operations. In the Class 1\* permit modification request submitted on March 4, 2026 regarding changes to the Closure Dates in Table G-1 [AR 260305], emplacement in Panel 12 would take place for ten years, or an average of 1,875 m<sup>3</sup> of CH waste per year. SRIC strongly advocates that the Permittees be required to provide detailed information about those future planned emplacement rates and operational safety of Panels 8, 11, and 12. [AR 260309].

Such information about DOE's plans to reduce waste emplacement and greatly prolong WIPP's operations should also address the misinformation being spread to encourage comments from the United Steelworkers Union and others that the AIM threatens "good-paying union jobs" and could slow down shipments from other sites. In fact, the Permittees were planning substantial reductions in waste shipments and emplacement before the AIM was noticed. The

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<sup>8</sup> Permit Table 4.1.1 has a CH capacity limit of 18,750 m<sup>3</sup> and a RH capacity limit of 650 m<sup>3</sup> for Panel 8. Permit Table G-1 shows that Panel 8 would be emplacing waste from 11/22 through 4/26, a total of 42 months. [18,750/42X12 =5,357.16].

<sup>9</sup> In FY 2012, LANL TMW volume emplaced totaled 1,514 m<sup>3</sup> and 1,463 m<sup>3</sup> was emplaced in FY 2013. <https://www.energy.gov/documents/volume-5-empdf-1> at 90.

Permittees have provided no evidence that the AIM would further reduce those planned emplacement rates.

C. Comments on subsections i to vi.

SRIC supports subsections i and ii as providing significant, measurable volume requirements for LANL legacy waste to be shipped to and emplaced at WIPP. Insofar as the DOE wants to send legacy or non-legacy waste from other generator/storage sites to WIPP, those subsections provide an incentive to prioritize emplacement of all LANL legacy waste. Once all LANL legacy waste is emplaced, legacy shipments from other sites could be substantially increased, as is further discussed below.

SRIC generally supports subsection iii, which is clearly within NMED's authority to require relevant information. But we suggest a change to include TRU Mixed Waste volumes. TRU Mixed Waste volumes emplaced must be tracked pursuant to Table 4.1.1. Both TRU Mixed Waste volumes and LWA volumes are included in the Weekly Status Reports.<sup>10</sup> Thus, both volumes can and should be included in the monthly reports. SRIC supports the following 4.2.1.4.iii:

Within 15 days of the last day of each month, the Permittees shall provide a written report and certification documenting all waste emplaced at WIPP on a **TRU Mixed Waste and LWA TRU waste** volume basis. The report shall distinguish between legacy and non-legacy waste and include the percent of waste emplaced from each generator/storage site during the previous month.

SRIC supports the intent of subsection iv to prioritize removal of waste stored above-ground in LANL MDA-G. That waste is especially exposed to surface conditions, including possible wildfires, which is a significant risk of great public concern, as various AR documents indicate. However, SRIC supports some clarifying language because there is substantial buried legacy TRU waste in Area G. It may not be possible to retrieve, repackage as necessary, characterize, and ship all of that buried legacy waste by July 1, 2028. Such repackaging and characterization will likely require some of the buried waste to be on the surface, once it is retrieved, after July 1, 2028. The provision should not preclude such necessary storage. Thus, SRIC supports the following subsection 4.2.1.4.iv:

**All ~~L~~ legacy waste stored above-ground at LANL Material Disposal Area-G as of December 1, 2026 shall be shipped and emplaced by July 1, 2028. By January 4, 2027, the Permittees shall provide an inventory of all the stored above-ground waste.**

Additionally, SRIC is concerned that the total amount of buried LANL TRU waste has not been identified in the ATWIR-2025. On June, 5, 2024, the Permittees submitted "Supplemental Information to Support the Sufficient TRU Mixed Waste Volume Capacity Certification" that was based on the ATWIR-2023 [AR 240602]. That information is out of date. As one example, the waste stream with the largest volume of buried waste was LA-CIN04.001, which consists of

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<sup>10</sup> <https://www.wipp.energy.gov/general/GenerateWippStatusReport.pdf>

the corrugated metal pipes that have now been exhumed. Furthermore, neither the ATWIR-2023 nor the ATWIR-2025 include waste identified as being from Pit 9 in Area G.<sup>11</sup> Consequently, SRIC supports an additional provision, which is clearly within NMED’s authority to require relevant information, so that NMED and the public have an accurate inventory of all buried TRU waste at LANL. The new Section 4.2.1.4.vii:

**By no later than January 1, 2029, the Permittees shall submit a comprehensive inventory of all buried TRU waste streams at LANL, including TMW and LWA volumes and final waste forms.**

SRIC supports subsection v, which is clearly within NMED’s authority to require relevant information, with one concern and one clarification. The concern is that four months after the end of the year to submit the annual report is too long a timeframe. The information is readily available to the Permittees and thus should be made available promptly, in no more than 60 days, to NMED and to the public. The clarification is to ensure that the volumes are trackable in the public WWIS database, which currently does not provide easy determination of the waste volumes being emplaced. Thus, SRIC supports revised subsection 4.2.1.4.v:

The Permittees shall submit an annual report by **March 1**~~April 30~~ of each year. For each generator/storage site and for both legacy and non-legacy waste, the report shall detail, at a minimum, waste shipments, volumes of waste emplaced, volumes of waste remaining in retrievable storage, as well as any other information needed to demonstrate prioritization of LANL legacy waste and compliance with the requirements of this Permit section. The information shall be provided for the prior calendar year. Volumes shall be reported in LWA TRU Waste and TRU Mixed Waste volumes. Volumes shall be trackable in WWIS, **pursuant to Permit Section 2.3.1.7.**

SRIC strongly supports subsection vi. Such a clear enforcement mechanism has been shown to be necessary to ensure compliance with these important provisions. The Permittees object to that suspension of waste shipments from sites other than LANL because: “The Permittees oppose this condition. The condition is not practicable and cannot be achieved.”<sup>12</sup>

To the contrary, the provision not only can be achieved, it has been achieved. Waste emplacement at WIPP has been suspended since May 7, 2026<sup>13</sup> because (unplanned) the air intake shaft has been out of service since April 15, 2026 and (unplanned) the salt shaft hoist has been out of service since April 28, 2026.<sup>14</sup> Shipments have been suspended since May 14, except for one shipment from LANL on May 26.<sup>15</sup> Thus, the Permittees can suspend shipments from sites other than LANL to prevent violation of this provision.

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<sup>11</sup> <https://www.energy.gov/sites/default/files/2023-09/TA-54%20Area%20G%20Fact%20Sheet.pdf>

<sup>12</sup> [https://scs-public.s3-us-gov-west-1.amazonaws.com/env\\_production/oid349/did200065/pid\\_213666/assets/merged/6q0si5cra46\\_document.pdf?v=12527](https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid349/did200065/pid_213666/assets/merged/6q0si5cra46_document.pdf?v=12527) at 8.

<sup>13</sup> <https://wipp.energy.gov/WDSPA/EmplaceCal>

<sup>14</sup> <https://www.dnfsb.gov/sites/default/files/2026-06/WIPP%20Monthly%20for%20April%202026.pdf>

<sup>15</sup> <https://wipp.energy.gov/WDSPA/ShipCal>

SRIC further notes that the Permittees can and do suspend shipments from other sites and emplacement of waste in the underground for planned and unplanned reasons. Waste shipments and emplacement were suspended for approximately three years from the time of the unplanned February 5, 2014 fire and the unplanned February 14, 2014 waste release. Waste shipments are suspended for the annual planned maintenance outage.

#### 4. Legacy TRU Waste Disposal Plan Permit Section 4.2.1.5

SRIC agrees that Permit Section 4.2.1.5 should be given more measurable, enforceable requirements to ensure that legacy waste from all sites should be prioritized, since disposal of that Cold War waste was the principal reason that WIPP was created. SRIC has discussed that issue in numerous occasions, including in AR 230425.245. SRIC is concerned about the significant amount of non-legacy waste that already has been emplaced at WIPP and the significant amount of “Projected Waste” that the Permittees intend to dispose in WIPP and the large amount of “Potential Waste” that the Permittees could also designate as “WIPP Bound”.

However, SRIC opposes the revisions to Section 4.2.1.5 that do not require any of the additional waste volumes to be legacy waste. Because there are substantial amounts of legacy waste, especially at the Hanford site, prioritization should include substantial and specified amounts of legacy waste from other generator/storage sites, just as is being done for LANL.

Since Permit Subsection 4.2.1.4.i requires as of January 1, 2027 that 55 percent of all waste emplaced is LANL legacy waste, a significant amount of the additional 45 percent of the waste volume should also be legacy waste from other generator/storage sites. Since Permit Subsection 4.2.1.4.ii as of January 1, 2032 requires 75 percent of all waste to be LANL legacy waste, a significant amount of the additional 25 percent of the waste volume should also be legacy waste from other generator/storage sites.

Therefore, SRIC supports the following revision (changes in green):

#### Legacy TRU Waste Disposal Plan

The Legacy TRU Waste Disposal Plan previously developed by the Permittees, in consultation with the generator/storage sites and stakeholders, shall be publicly posted on the WIPP website. ~~To the extent practicable as articulated in the final Plan, Panel 12 will be reserved for~~ The disposal of legacy TRU mixed waste, as defined in Part 1, Section 1.5.24, will be prioritized in all currently permitted HWDUs; the portion of all waste emplaced shall be at least 55<sup>85</sup>% legacy waste, as demonstrated by reporting requirements in Permit Section 4.2.1.4. Beginning January 1, 2032, and until all legacy waste has been emplaced at WIPP, the Permittees shall emplace legacy waste such that emplaced legacy waste is at least 75<sup>95</sup>% of the total volume of waste emplaced, as demonstrated by reporting requirements in Permit Section 4.2.1.4.

### III. Additional comments

1. In objecting to the AIM, the Permittees<sup>16</sup> and LANL Permittees<sup>17</sup> make various remarkably identical or similar and unsupportable assertions. For example,

NMED's proposed definition is not consistent with the foundational requirements of the LWA, which does not contemplate a definition or prioritization of "legacy" waste....In the LWA, Congress did not anticipate or require additional differentiation of waste categories.<sup>18</sup>

As SRIC has pointed out [AR 250103], when the LWA was passed in 1992, there was only Cold War legacy TRU waste. The Rocky Flats Plant had been shut down in 1989 and Congress had not appropriated funding for any new plutonium pit production facility to generate more TRU waste. The Permittees have also not pointed out any provision of the LWA that prohibits definition of legacy and non-legacy waste, and there is no such prohibition in the law.

Furthermore, among the foundational requirements of the LWA is recognition of the unique authority of the State of New Mexico in the Consultation and Cooperation Agreement (§§ 2(2) and 21) and the reiteration of the state's RCRA authority (§§ 9(a)(1)(C), 9(d), and 14(b)). Such authority includes allowing the state to revoke a permit or require closure for cause, thereby allowing the end of waste operations before the capacity volume limit is reached.

2. In their June 16, 2026 comments, the Permittees also state:

Shipping is the responsibility of generator/storage sites under RCRA and not of the receiving disposal facility. Specifying shipment of any waste in the Permit, regardless of site, is outside the purview of NMED and outside the control of the Permittees.<sup>19</sup>

To the contrary, the WIPP Permit can and always does impose conditions pertaining to waste management. The Permit specifies what wastes are permitted and prohibited. The Permit specifies personnel training required to manage the waste. The Permit specifies what containers may be used to store and dispose of waste. The Permit specifies how waste is characterized. The New Mexico Hazardous Waste Act requires "regulations for the management of hazardous waste as may be necessary to protect public health and the environment." NMSA 1978, §74-4-4.A. Consequently, the WIPP Permit has always provided conditions pertaining to waste management as the law requires.

As was pointed out above regarding Permit Section 4.2.1.4.vi, the Permittees have historically and currently suspended shipments and waste emplacement from generator/storage sites. They

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<sup>16</sup> Footnote 12

<sup>17</sup> [https://scs-public.s3-us-gov-west-1.amazonaws.com/env\\_production/oid349/did200065/pid\\_213666/assets/merged/yh06ilaan2h\\_document.pdf?v=37066](https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid349/did200065/pid_213666/assets/merged/yh06ilaan2h_document.pdf?v=37066)

<sup>18</sup> Footnote 17 at 10; footnote 12 at 4.

<sup>19</sup> Id. at 7-8.

prioritized shipments from the Rocky Flats Plant in the early years of WIPP's operations and have since prioritized shipments from INL. They do such prioritization on an ongoing basis in setting the shipping schedules for the generator/storage sites and providing all of the shipping containers that are used to transport all waste to WIPP.

DOE exclusively provides (or does not provide) the required shipping containers for the generator/storage sites (TRUPACT-IIIs, HalfPACTs, TRUPACT-IIIs, RH-TRU 72-B cask, or CNS 10-160B). DOE decides which site(s) have shipping containers available to ship to WIPP.

Clearly, the Permittees do not want NMED to impose further conditions related to priorities for shipping and emplacing waste at WIPP. The Permittees want NMED to consider such conditions as being beyond its purview.

But also clearly, many New Mexicans, including SRIC, have repeatedly demanded that NMED impose further conditions to prioritize LANL legacy waste shipments and waste emplacement in order to reduce risk. The Governor has recognized those demands and so informed the Secretary of Energy more than four years ago. [AR 220403]. The demand is because the Permittees have demonstrably not carried out such prioritization. NMED is appropriately using its authority to respond to the actual reality and to the public's demands.

Furthermore, WIPP is a unique facility for defense TRU waste, for which DOE has control of and responsibility for. All the generator/storage sites are DOE sites and are the responsibility of and are under the control of Permittee DOE.

Additionally, Permittee DOE decides whether Co-Permittee SIMCO receives incentive funding in the PEMP for shipments from LANL or INL or other sites. Also,

The Manager of the U.S. Department of Energy (DOE) Carlsbad Field Office has the authority to suspend a generator's Permit certification to ship TRU mixed waste to the WIPP facility should the generator fail to meet this requirement.  
Permit Attachment A1-1b.

Permittees state that DOE has to comply with other states' requirements, including those of Idaho and South Carolina.<sup>20</sup> Those prioritization decisions were made with no input from the State of New Mexico and its citizens. Thus, there is no legitimate basis to state that DOE does not have to comply with State of New Mexico requirements for LANL and WIPP, which are subject to public notice and comment in which the Permittees, other states, and other members of the public can and do participate.

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<sup>20</sup> SRIC has refuted, without contradiction from the Permittees, the claim that the South Carolina Settlement Agreement applies to WIPP. [AR 250103 at 5; AR 251209 at 2.]

3. Permittees and LANL Permittees cite 10 U.S.C. § 6128 and in identical language state:

Mandatory quotas for LANL “Legacy Waste” would force storage saturation and halt pit-production (TRU waste disposition), conflicting with production requirements in 10 U.S.C. § 6128 and impairing DOE’s mission.<sup>21</sup>

But that statute does not mention WIPP or waste disposal. The statute does not condition the pit production requirements on storage or disposal of the waste. Thus, the AIM does not conflict with that statute. However, DOE has not complied with the § 6128(a)(2) requirement to produce not less than 10 war reserve plutonium pits in 2024 and the § 6128(a)(3) requirement to produce not less than 20 war reserve plutonium pits in 2025.

4. Finally, SRIC recognizes its rights and reminds NMED and the Permittees that it could bring a Citizen Suit for violations at WIPP. 42 U.S.C. § 6972.

Thank you very much for your careful consideration of, and your response to, these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Hancock". The signature is written in a cursive, flowing style.

Don Hancock

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<sup>21</sup> Footnote 12 at Attachment A at 6; Footnote 16 at 6.