nuclear watch new mexico

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Ms. Megan McLean
WIPP Program Manager, Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

Via email to HWB-WIPP-Comment@env.nm.gov

Comments on the New Mexico Environment Department's Agency-Initiated-Modification Draft Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant near Carlsbad, New Mexico, and Request for Hearing

Dear Ms. McLean:

On April 23, 2026, the New Mexico Environment Department (NMED) issued a new proposed Draft Permit for the Waste Isolation Pilot Plant (WIPP) that requires a minimum percentage of shipments of legacy waste from the Los Alamos National Laboratory (LANL) to WIPP. This requirement comes as an agency-initiated modification (AIM) pursuant to New Mexico Hazardous Waste Regulations that allow NMED to modify an existing permit upon the receipt of information not available at the time of the issuance of the current Permit. NMED has determined there is sufficient basis for this agency-initiated modification that clarifies the priority to emplace legacy waste and reduces the risk of existing LANL legacy waste. Nuclear Watch New Mexico (NukeWatch) supports NMED's determination.

These proposed changes would require the Department of Energy (DOE) to ensure that legacy transuranic waste shipments from Los Alamos are at least more than half by volume of the total annual legacy waste shipments from all DOE sites. DOE will likely claim it cannot afford this, even though it is spending $5 billion this year on nuclear weapons research and production programs at LANL. Out of that, $1.3 billion is to produce plutonium "pit" bomb cores that will create yet more transuranic wastes. Moreover, plutonium pit production at LANL is slated to get a huge $1 billion increase in FY 2027 to $2.3 billion, further accelerating the generation of radioactive wastes.

DOE has not done cleanup right ever since the advent of the Cold War. Instead of genuine cleanup at LANL, DOE plans to "cap and cover" more than a half-million cubic meters of radioactive and hazardous wastes, leaving them permanently buried in unlined pits and trenches. That is unacceptable as a perpetual threat to northern New Mexico's irreplaceable groundwater.

The 1992 Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act (Public Law 102-579) transferred 16 sections of land (about 10,240 acres) in southeast New Mexico from the Department of the Interior to the Department of Energy. It officially designated the site as the nation's first deep-geologic repository for defense-generated TRU waste. At this time, 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. WIPP was built for legacy TRU waste and and that must be a priority.

To be explicit, Nuclear Watch NM supports the main proposed changes in NMED's Draft Permit as summarized here:

- 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.**

- 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.**

- Legacy waste currently stored aboveground at LANL Material Disposal Area G **shall be shipped and emplaced at WIPP by July 1, 2028**.

- If at any point any of these conditions are not met, **all generator/storage site shipments (with the exception of LANL) must cease until all deficiencies are cured**.

- **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.

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.

We strongly support getting all aboveground TRU wastes out of Area G by July 1, 2028. We believe that is of growing importance given New Mexico's increasing aridity and probability of catastrophic wildfires. This is not hypothetical given that the 2000 Cerro Grande Fire burned to within several hundred yards of Area G, which could have been truly catastrophic.

On a different matter, it should be noted that WIPP is not a jobs program. It will be in operation long after its originally promised closure date of 2024. DOE should be robustly planning a future out-of-state WIPP-replacement now.

Plutonium pit production is the National Nuclear Security Administration's most expensive program ever, with $5 billion to be spent over each of the next six years[1] and at least $60 billion over the next 20 years. NNSA has explicitly stated that 53% of WIPP's remaining capacity will be reserved for future pit production wastes.[2] This is obviously in direct opposition to NMED's position that Cold War legacy wastes at LANL must be prioritized. We urge NMED to be firm and resolute on that requirement. In January 2027 NMED should fully brief the incoming new governor on why prioritizing cleanup over unnecessary expanded nuclear weapons production is of paramount importance in protecting New Mexicans and their environment.

The only repository for radioactive transuranic (TRU) wastes is the Waste Isolation Pilot Plant (WIPP) in southern New Mexico. WIPP is already oversubscribed for all possible TRU wastes that DOE and NNSA would like to send to it. NMED is mandating that DOE prioritize LANL's Cold War wastes for disposal at WIPP instead of new bomb wastes. We agree, particularly since any non-legacy waste would take up space originally reserved for legacy TRU waste given the legal cap on allowable wastes. WIPP was originally designed and built for Cold War legacy waste, and not to enable a new arms race. We must preserve WIPP's valuable space for cleanup, not the buildup of more unneeded nuclear weapons.

New Mexico needs to protect its groundwater, not prioritize the production of new-design nuclear weapons over cleanup. There is now confirmed chromium contamination on San Ildefonso Pueblo land. The fight over Lab cleanup versus more unneeded nuclear weapons is made dramatically clear at LANL's radioactive and toxic waste dumps. NMED has issued a draft Order mandating comprehensive cleanup and excavation of buried wastes at Area C which last received wastes in 1974. However, because of Area C's proximity to PF-4, DOE and LANL are now claiming than it is associated with active Facility operations, meaning pit production, which further means that any cleanup is indefinitely postponed. We believe that NMED must strongly respond, which very much includes the successful finalization of its proposed new WIPP Permit.

The AIM incorporates additional requirements because DOE didn't do what it agreed to in the 2023 WIPP Permit. Under 40 C.F.R. § 270.41(a)(2)1, a permit may be modified only if: (1) information was unavailable at issuance; and (2) it would have justified different conditions at that time. The new information is that DOE did not prioritize disposal of LANL waste at WIPP, as it had previously agreed to.

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[1] See NNSA's FY 2027 Congressional Budget Request, PDF pages 18-20, https://www.energy.gov/documents/doe-fy-2027-volume-1-wa. Those budget figures include plutonium pit production at both LANL at the Savannah River Site (SRS). The independent Government Accountability Office has repeatedly stated that NNSA has no credible cost estimate for pit production.

[2] Final Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement, NNSA, December 2019, https://www.energy.gov/sites/default/files/2020/01/f70/final-supplement-analysis-eis-0236-s4-sa-02-complex-transformation-12-2019.pdf, page 65.

DOE officials cite congressionally mandated quotas for LANL pit production as a reason to not prioritize LANL legacy waste shipments to WIPP. DOE claims the prioritization of legacy wastes could cause it to miss the pit production deadlines production requirements in 10 U.S.C. §6128, thereby impairing DOE's mission.

10 U.S.C. §6128 states:

> (a) Requirement - Consistent with the requirements of the Secretary of Defense, the Secretary of Energy shall ensure that the nuclear security enterprise-
> (1) during 2021, begins production of qualification plutonium pits;
> (2) during 2024, produces not less than 10 war reserve plutonium pits;
> (3) during 2025, produces not less than 20 war reserve plutonium pits;
> (4) during 2026, produces not less than 30 war reserve plutonium pits; and
> (5) during 2030, produces not less than 80 war reserve plutonium pits.[3]

Left unsaid is the embarrassing fact that the National Nuclear Security Administration has already missed all pit production deadlines to date (none of which had anything to do with WIPP) and will likely miss all future deadlines.

We support NMED's new provisions in the draft Permit in part to help preserve Lab cleanup funding in annual Congressional Budget Requests. DOE has already started to cut funding for cleanup programs, going so far as to refuse to pay for the sampling of LANL stormwater runoff to help protect the Buckman Direct Diversion Project that supplies drinking water for the City and County of Santa Fe.[4] The necessary ~$100,000 is a pittance for LANL and DOE, but their parsimoniousness is highly indicative of their lack of real concern for New Mexicans.

The draft Permit defines "Projected Waste" as:

> The part of the Annual Transuranic Waste Inventory Report (ATWIR) inventory that has not been generated (does not physically exist) but is estimated to be generated at some time in the future by the TRU waste generator/storage sites. TRU waste in projected waste streams includes 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 yet been packaged. (1.5.23)

To fully account for all future Projected Waste so that comprehensive cleanup can be properly planned, NukeWatch believes that all buried TRU at LANL should be credibly estimated and included in the Annual Transuranic Waste Inventory Report.

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[3] Division C, Title XXXI, Section 3111 of the National Defense Authorization Act (NDAA) for Fiscal Year 2026 (Public Law 119-60), §6128 *Plutonium pit production capacity*, https://www.govinfo.gov/content/pkg/BILLS-119s1071enr/pdf/BILLS-119s1071enr.pdf

[4] See https://sourcenm.com/2026/06/12/testing-the-waters-feds-stop-paying-to-sample-lanl-runoff/

The AIM has no date for buried TRU wastes to be excavated, characterized and shipped to WIPP. It only has requirements for the percentages of LANL legacy waste to go to WIPP on an annual basis. We believe that a date certain is needed by which time buried legacy waste inventories are credibly estimated. We specifically suggest January 1, 2029, as the required date.

We have repeatedly pointed to the need to have all buried TRU wastes at LANL credibly estimated since DOE ignores much buried TRU waste in its own limited inventories. This is important because DOE officials claim that WIPP is about 40% full toward its statutory cap of 6.2 million cubic feet of waste. This leaves 3.7 million cubic feet remaining (or 137,000 cubic yards).

LANL's Corrective Measures Evaluation (CME) for Material Disposal Area G estimated that there is 54,536 cubic yards of buried TRU in several pits.[5] This is 40% of the 137,000 cubic yards of space remaining at WIPP. There is simply not enough space at WIPP for all the legacy TRU waste across the nation.

Nuclear Watch New Mexico actively participated in the 2023 WIPP Permit negotiations. We questioned the Draft Permit's definition of "Legacy Waste." In our January 3, 2025 formal comments on the Legacy TRU Waste Disposal Plan we proposed a legacy waste definition that is different from what NMED has included in the AIM.[6]

We again urge NMED to adopt language that defines Legacy Waste as having been generated before the opening of WIPP in 1999. The Plan ignored the promises DOE had made to New Mexicans that WIPP was a "pilot project" to clean up Cold War wastes and that it would close in 2024 after 25 years of operations. The Department of Energy has broken all of these promises.

In closing, Nuclear Watch NM has had a long involvement in LANL cleanup issues, going back to 1999. This is added reason for us to be involved in renewed WIPP Permit negotiations. For all the reasons stated in these comments and more, Nuclear Watch New Mexico requests a public hearing on these matters.

Thank you for your consideration of these comments,

Sincerely,

Jay Coghlan, Executive Director
Scott Kovac, Research Director

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[5] https://nukewatch.org/oldsite/importantdocs/resources/Area_G_Pit_Totals_from_CME_rev3_Sept-2011.pdf. More detail of the types of Area G wastes compiled from the MDA G Corrective Measures Evaluation are available at https://nukewatch.org/oldsite/importantdocs/resources/AGCME-inventories.pdf. The MDA G CME mentions TRU and plutonium in several pits and shafts but lacks exact estimates of amounts.

[6] See Legacy TRU Waste Disposal Plan comments, NukeWatch comments, Jan. 3 2025 AR 250615