



MICHELLE LUJAN GRISHAM
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Via Email

February 11, 2026

Mark Bollinger, Manager
Department of Energy - Carlsbad Field Office
P.O. Box 3090
Carlsbad, New Mexico 88221-3090

Ken Harrawood, Program Manager
Salado Isolation Mining Contractors LLC
P.O. Box 2078
Carlsbad, New Mexico 88221-2078

**RE: NMED-Initiated Permit Modification for the Waste Isolation Pilot Plant
EPA I.D. Number NM4890139088**

Dear Mark Bollinger and Ken Harrawood,

This letter is to inform you that the New Mexico Environment Department (NMED) has determined that, pursuant to 20.4.1.901(B) NMAC and 40 CFR 270.41.a, a modification is necessary for the WIPP Hazardous Waste Permit. This modification is necessary because the Department of Energy (DOE) and Salado Isolation Mining Contractors (SIMCO) have failed to prioritize the emplacement of transuranic (TRU) mixed waste from clean-up activities at the Los Alamos National Laboratory (LANL) pursuant to the operating permit and related agreements. In addition, new and material information was received by NMED after the 2023 permit renewal, demonstrating that information underlying the current permit is no longer valid.

Under Permit Section 4.2.1.4, DOE and SIMCO (Permittees) are required to certify that sufficient capacity exists in permitted Hazardous Waste Disposal Units to dispose of New Mexico generator site waste and must prioritize LANL waste while the WIPP permit remains in effect. The 10-year renewal permit for the WIPP facility officially went into effect on November 3, 2023. The permit stipulates that Panel 12 is reserved for the disposal of legacy TRU mixed waste to the extent practicable. However, the revised Legacy Plan submitted on November 17, 2025, reveals that Panel 12 will not be available for disposal until 2035—two years after the current Permit term expires. This delay, coupled with the previous assertion that Panel 12 was necessary for disposal within the current term, demonstrates that the Permittees have not met their obligation to prioritize and accommodate LANL legacy waste as required.

In calendar year 2024, the volume of waste accepted and disposed of in the WIPP from LANL decreased to 191.24 cubic meters compared to 225.28 cubic meters in calendar year 2023, 472.10 cubic meters in calendar year 2022, and 242.82 cubic meters in calendar year 2021. In calendar year 2025, the volume of waste accepted and disposed of in the WIPP from LANL was 430.74 cubic meters. In total, between 2021 and 2025, the amount of waste shipped from LANL to WIPP was 1563.18 cubic meters. Comparatively, the amount of waste shipped from Idaho National Laboratory during the same time period was 7825.54 cubic meters. Overall, the Permittees are accepting and disposing of five times more waste from Idaho National Laboratory in WIPP than LANL waste, which is in conflict with the underlying intent of the terms

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of the permit.

In the permit renewal application, which was consolidated with the Class 3 permit modification request for Panels 11 and 12, the Permittees stated that the capacity in the underground hazardous waste disposal unit, identified as Panel 12, was needed, and Panel 12 would be constructed and used for disposal within the current permit term. Both the updated renewal application, containing the Class 3 modification and the current permit include an anticipated operations start date for Panel 12 of July 2028 with an end date of June 2031. Further, the updated renewal application and current permit include a closure start date of July 2031 and closure end date of January 2032 (Permit Attachment G, Table G-1). The revised Legacy Plan, received by NMED on November 17, 2025 [AR 251105], states that Panel 12 will not be available until 2035 which is two years after the current permit expires and three years after the anticipated closure end date articulated in the permit.

The information articulated in the Legacy Plan was not available during the permit renewal process and yet is directly relevant to how and when legacy waste is prioritized during the permit term. Had NMED known during the permitting process that Panel 12 would not be available until after the current permit term expires in 2033 and legacy waste shipments could not be accommodated as planned, NMED would have imposed different or additional permit conditions on waste prioritization during the renewal process.

Taking these material facts into consideration and pursuant to 40 CFR 124.5.c.1 and 20.4.1.901(B)(5), NMED will issue the Permittees a draft permit, following the procedures established in 20.4.1.901 NMAC. The draft permit conditions will address and require the Permittees to:

1. Prioritize the emplacement of LANL legacy waste, by volume (e.g., cubic meters) and timeframe (e.g., quarterly);
2. Establish a definition of legacy waste;
3. Prioritize the emplacement of legacy waste from all generator sites over non-legacy waste and newly generated waste;
4. Establish permit conditions that are fully and objectively trackable and enforceable for all waste streams;
5. Establish separate permit conditions for legacy waste risk reduction at LANL that are trackable and enforceable; and
6. Apply these new conditions to currently permitted panels.

As a next step, NMED will share the draft permit conditions outlined above with you, stakeholders, and the public in April. Further, NMED will seek public comment on the draft permit conditions.

Please note that NMED has legal authority under the New Mexico Hazardous Waste Act and 40 CFR Parts 270 and 124 to modify, suspend, or revoke (terminate) hazardous waste permits to protect human health and the environment. The Secretary may take these actions if a permittee violates the law, misrepresents material facts, or if facility conditions change. At this time and for the reasons stated in this letter, an NMED-initiated permit modification to address the material issues with the WIPP operating is the appropriate course of action. However, NMED reserves the right to pursue other courses of action related to the WIPP hazardous waste operating permit as afforded to the Secretary per federal and state laws and

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regulations.

The State of New Mexico has already discussed the need to modify WIPP permit conditions with DOE headquarters, and we hope this letter provides helpful context for future discussions. If you would like to discuss this letter please contact Megan McLean, WIPP Program Manager, of my staff at 505-690-5654, or by email at Megan.McLean@env.nm.gov.

Sincerely,

DocuSigned by:

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John David Nance

Chief

Hazardous Waste Bureau

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