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FACT SHEET
SEPTEMBER 14, 2004

INTENT TO ISSUE A HAZARDOUS WASTE FACILITY PERMIT
UNDER THE NEW MEXICO HAZARDOUS WASTE ACT

FORT WINGATE DEPOT ACTIVITY
MCKINLEY COUNTY, NEW MEXICO

- Facility Name:** Fort Wingate Depot Activity (FWDA)
- EPA ID Number:** NM6213820974
- Type of Facility:** FWDA is a former ammunition depot under the command of the United States Department of the Army (Army) and is classified as a hazardous waste treatment facility under the New Mexico Hazardous Waste Act (HWA), Sections 74-4-1 through 74-4-14, NMSA 1978, as amended, and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 through 6992. The New Mexico Environment Department (NMED) proposes to issue a Hazardous Waste Permit to the Army that requires Army to: 1) close the Open Burn/Open Detonation Unit (OB/OD Unit), and, if necessary, conduct post-closure care; 2) conduct corrective action activities for solid waste management units (SWMUs) and Areas of Concern (AOCs); and 3) conduct tasks in accordance with schedules of compliance.
- Location:** FWDA is located in western New Mexico in McKinley County and is approximately eight miles east of the city of Gallup.
- Owner/Operator:** United States Department of the Army (Army)

INTRODUCTION

Army is the owner and operator of FWDA and is required to obtain a permit from NMED to manage hazardous waste pursuant to the HWA and RCRA. Prior to issuing a final permit, NMED is required to release a draft permit for public comment pursuant to 20.4.1.901.A(3) NMAC. This fact sheet is intended to facilitate public review of the Draft Permit.

REGULATORY BACKGROUND

Subtitle C of RCRA provides for “cradle to grave” environmental regulation for the management of hazardous waste at hazardous waste treatment, storage, and disposal facilities. The United States Environmental Protection Agency has authorized the State of New Mexico to implement and enforce Subtitle C requirements, including corrective action requirements, under its own hazardous waste management program. The State’s enabling authority for the program is the HWA, which authorizes the State’s Environmental Improvement Board to adopt regulations and NMED to implement and enforce the provisions of the HWA and regulations.

As part of the State’s program, the EIB has adopted regulations relating to, among other things, the issuance of hazardous waste permits. These regulations incorporate by reference pertinent sections of the federal code of regulations – 40 CFR parts 260 through 270, and 273 – and are codified in the Hazardous Waste Management Regulations (HWMR), 20.4.1 NMAC.

The HWA and HWMR require each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste to have a permit. *See* 42 U.S.C. 6925 and 20.4.1.900 NMAC (incorporating 40 CFR 270.1). A treatment, storage or disposal facility in existence on November 19, 1980 is eligible for “interim status.” Interim status authorizes an existing facility to operate, subject to the interim status standards set forth in 20.4.1.600 NMAC, incorporating 40 CFR part 265, until NMED issues or denies a RCRA permit or until interim status is otherwise terminated.

The HWA and HWMR further require corrective action for all releases of hazardous waste or constituents from any SWMU at a facility seeking a permit, regardless of the time at which waste was placed in such unit. 42 U.S.C. 6924(u), Section 74-4-4.2(B), NMSA 1978, and 20.4.1.500 NMAC (incorporating 40 CFR 264.101(a)). Corrective action is also required beyond the facility boundary. 42 U.S.C. 6924(v) and 20.4.1.500 NMAC (incorporating 40 CFR 264.101(c)).

PROCEDURAL BACKGROUND FOR THE FWDA PERMIT APPLICATION

General Permit Application Requirements: Owners or operators of hazardous waste management facilities, including interim status facilities, are required to submit a comprehensive permit application covering all aspects of design, operation, maintenance, and closure of their facilities. The permit application consists of Parts A and B. Part A of the Permit Application

(Part A Application) is a short, standard form that summarizes general information about a facility including the name of the owner/operator, a list of the types of wastes managed, a facility layout diagram, and the activities requiring a permit. Part B of the Permit Application (Part B Application) is an extensive document submitted in a narrative, tabular, and schematic format that describes the facility operations in detail and includes information necessary to establish corrective action requirements for releases from SWMUs and AOCs. Because the OB/OD Unit is a closing unit, which will not be permitted to operate, the Part B Application for FWDA required only the information necessary to close the OB/OD Unit including: a general description of the facility; information on the design and operation of the unit; a closure plan; and information related to corrective action for SWMUs and AOCs.

Part A Permit Application: On November 12, 1980, Army timely submitted to NMED its Part A Permit Application for FWDA. The Part A Permit Application listed two hazardous waste treatment units: the Open Burning/Open Detonation Unit and the Deactivation Furnace. Army has submitted several, amended Part A Permit Applications since the initial submission to update and further describe the extent of treatment activities conducted at the OB/OD Unit under interim status. In one of its amended Part A Permit Application submitted on January 18, 1985, Army removed the Deactivation Furnace as a hazardous waste treatment unit because the Army never operated the unit under interim status. NMED approved the revision deleting the Deactivation Furnace on March 19, 1985. Accordingly, the OB/OD Unit is the only existing hazardous waste management unit at FWDA that received interim status authority to operate under the Part A Permit Application, 20.4.1.600 NMAC (incorporating 40 CFR part 265), 42 U.S.C. 6925, and Section 74-4-9, NMSA 1978,.

Part B Permit Application: In November 1988, Army timely submitted its Part B Permit Application for operation of the OB/OD Unit as a miscellaneous treatment unit under 40 CFR part 264, subpart X. On November 10, 1992, Army submitted an interim status closure plan for the OB/OD Unit and notified NMED of its intent to withdraw the Part B Permit Application for operation of the OB/OD Unit. Army, however, failed to complete closure of the OB/OD Unit under interim status.

On January 25, 1999, NMED required Army to submit a post closure permit application for the OB/OD Unit to, among other things, complete closure. On June 30, 1999, Army submitted its Post-Closure Permit Application. Army revised its permit application several times in response to NMED-issued Notices of Deficiency. On June 12, 2003, Army submitted the latest revised permit application. NMED reviewed Army's revised permit application and determined that it was sufficiently complete to prepare this draft Permit.

TYPE AND QUANTITY OF WASTES

Type of Wastes: Army will be permitted to conduct closure activities for the OB/OD Unit. No treatment, storage, or disposal of hazardous waste will be allowed under the permit. The following hazardous wastes are associated with prior interim status, treatment activities at the OB/OD Unit.

D Waste Codes (Hazardous wastes exhibiting the characteristics of ignitability, reactivity, corrosivity, or toxicity): D001 (ignitable), D003 (reactive), D005 (barium), D006 (cadmium), D007 (chromium), D008 (lead), D009 (mercury), and D030 (2,4-dinitrotoluene).

F Waste Codes (Hazardous wastes from non-specific sources): F003 and F005 (explosive contaminated solvents and rags).

K Waste Codes (Hazardous wastes from specific sources): K044 (wastewater treatment sludges from the manufacturing and processing of explosives).

P Waste Codes (Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof): P065 (mercury).

The “D,” “F,” “K,” and “P” Codes are EPA Hazardous Waste Numbers that are assigned to specific hazardous wastes. These codes are specified at 20.4.1.200 NMAC (incorporating 40 CFR part 261 subparts C and D).

Quantity of Wastes: The Army treated various quantities of waste military munitions at the OB/OD Unit from November 19, 1980 until 1993 when active use of the OB/OD Unit ceased. Army conducted detonations of explosives of up to 5,000 pounds above ground and detonation of explosives between 5,000 and 10,000 pounds with ten feet of earthen cover. Army has estimated the volume of waste and waste residues remaining at the OB/OD Unit at 72,740 cubic yards.

TYPE OF UNIT TO BE PERMITTED

Miscellaneous Treatment Unit. The OB/OD Unit is a treatment unit. There are no unit-specific performance standards under 20.4.1.500 NMAC (incorporating 40 CFR part 264) for open burning and open detonation units. A treatment unit for which there are no unit-specific performance standards is defined as a “miscellaneous unit” and must comply with the general performance standards under 20.4.1.500 NMAC (incorporating 40 CFR part 264, subpart X). Accordingly, the OB/OD Unit is a miscellaneous treatment unit. The OB/OD Unit includes: the Burning Ground Area; at least twelve open detonation craters known as the current detonation craters 1 through 12 (CDC-1 through CDC-12); and at least ten residue piles designated as current residue piles 1 through 10 (CRP-1 through CRP-10).

DESCRIPTION OF THE PERMIT

The draft permit is organized into eight permit parts and twelve attachments. The draft permit generally follows the format, style, and general conditions in EPA permitting guidance including, but not limited to: *Model RCRA Permit For Hazardous Waste Management Facilities* (Draft), U.S. EPA (September, 1988); *Model Permit For Hazardous and Solid Waste Amendments* (Draft), U.S. EPA (July, 1995); and *RCRA Guidance Manual for Subpart G Closure and Post Closure Care Standards and Subpart H Cost Estimating Requirements*, OSWER 9476.00-5 (January, 1987). Because of the unique conditions at FWDA, NMED proposes to impose, in addition to general permit conditions, several permit conditions that are necessary to protect human health and the environment pursuant to NMED's "omnibus authority" (see 20.4.1.900 NMAC (incorporating 40 CFR 270.32(b)(2))).

Each Permit Part is briefly described below and permit conditions of interest to the public are noted. The general regulatory authority for conditions in each Part is noted, but more specific citations are provided throughout the draft permit at the end of each condition.

Permit Part I (General Permit Conditions) contains permit conditions that apply to all hazardous waste management permits, most of which are based upon mandatory permit conditions set forth at 20.4.1.900 NMAC (incorporating 40 CFR part 270). Part I also references several permit attachments that provide more information regarding FWDA, namely Permit Attachment 1 (General Facility Description), Permit Attachment 2 (Facility Map), and Permit Attachment 12 (Map of OB/OD Unit). Notable permit conditions in Part I include:

Permit Condition I.F.4 (Transfer of Land Ownership) requires Army to notify NMED before transfer of land that is part of the Facility and provide information related to corrective action requirements on that land. This condition will ensure that Army's corrective action obligations on any land proposed for transfer will be met either before transfer or through adequate mechanisms in place to allow corrective action beyond the facility boundary after transfer, pursuant to 42 U.S.C. 6924(v) and 20.4.1.500 NMAC (incorporating 40 CFR 264.101(c)).

Permit Condition I.L (Community Relations Plan) requires the Army to provide information to the public on hazards related to waste military munitions at the Facility. The two main elements of the Community Relations Plan are the Public Safety Program and the Military Munitions Map and Table. Army is required to create and implement a Public Safety Program to educate the public regarding waste military munitions at FWDA and released beyond the facility boundary. Army is required to create and maintain a Military Munitions Map and Table to depict and identify waste military munitions released at FWDA and beyond the facility boundary. The Community Relations Plan is necessary to protect human health and the environment by limiting or preventing human exposure to waste military munitions that could cause serious injury or death.

Permit Part II (General Facility Conditions) contains mandatory permit conditions for operation of hazardous waste management facilities set forth at 20.4.1.500 (incorporating 40 CFR part 264, subpart B through E). A notable permit condition in Part II is:

Permit Condition II.C (Security) requires the Army to install a security fence around the OB/OD Unit and Kickout Area and post warning signs on the security fence in each language common in the region around the Facility and in pictograms. The security fence will prevent the unknowing entry, and minimize the possibility of unauthorized entry, of persons or livestock into areas known to contain released waste military munitions. The warning signs will ensure that persons approaching the fence are aware of the dangers at the Facility. This condition is necessary to protect human health and the environment.

Permit Part III (Closure Requirements) contains permit conditions for closure of the OB/OD Unit and associated releases to the Kickout Area. These conditions are based upon the requirements in 20.4.1.500 NMAC, incorporating 40 CFR part 264, subpart G and subpart X.

Army failed to provide a closure plan for the OB/OD Unit that meets the requirements of 20.4.1.500 NMAC (incorporating 40 CFR part 264, subparts G and X). Army's closure plan failed to propose that all hazardous waste and hazardous waste residues be removed from the OB/OD Unit and Kickout Area during closure. Instead, Army proposed to remove only a portion of the known hazardous wastes and contain the remaining hazardous wastes by the installation of an engineered cover. Additionally, Army's closure plan failed to specify in appropriate detail the proposed methods and procedures to close the OB/OD Unit.

Because Army's closure plan is deficient, NMED has specified the necessary steps required to close the OB/OD Unit and Kickout Area in the draft permit. Notable permit conditions include the following:

Permit Condition III.A.2 (Removal of Wastes and Waste Residues From the OB/OD Unit) requires Army to remove hazardous wastes and hazardous waste residues from the OB/OD Unit. Closure of the OB/OD Unit must include removal of all hazardous waste and hazardous waste residues. See 20.4.1.500 NMAC (incorporating 40 CFR part 264, subpart G). Failure to remove all hazardous waste (e.g., waste military munitions) and residues from the OB/OD Unit during closure would constitute abandonment and illegal disposal of hazardous waste without a permit under 42 U.S.C. 6925(a) and 20.4.1.900 NMAC (incorporating 40 CFR 270.1(b)) and would violate the closure requirements for treatment units in 20.4.1.500 NMAC (incorporating 40 CFR 264.113(a)) and prohibitions against land disposal of hazardous waste in 20.4.1.500 NMAC (incorporating 40 CFR 268.9(c) and 268.40).

Permit Conditions III.A.3 – III.A.6 and III.C require Army to remove or decontaminate all known contaminated soils from the OB/OD Unit. Following initial removal or decontamination activities, the Army must collect soil characterization and confirmation samples from the limits of remedial excavations and conduct a geophysical

investigation of the entire OB/OD Unit to ensure the removal or decontamination of contaminated soils where practicable. If contaminated soils remain, Army is required to submit an investigation work plan to determine the nature and extent of remaining contamination. A final remedy for remaining contaminated soils will be selected through a permit modification.

Permit Condition III.B (Closure Plan for Kickout Area) requires the Army to conduct a geophysical survey of the Kickout Area and remove all detected waste military munitions. Closure of the Kickout Area must include removal of all waste military munitions. *See* 20.4.1.500 NMAC (incorporating 40 CFR part 264, subpart G). Failure to remove all waste military munitions from the Kickout Area during closure would constitute abandonment and illegal disposal of hazardous waste without a permit under 42 U.S.C. 6925(a) and 20.4.1.900 NMAC (incorporating 40 CFR 270.1(b)) and would violate the closure requirements for treatment units in 20.4.1.500 NMAC (incorporating 40 CFR 264.113(a)) and prohibitions against land disposal of hazardous waste in 20.4.1.500 NMAC (incorporating 40 CFR 268.9(c) and 268.40).

Under the Schedule of Compliance in Permit Part VIII, Army is required to submit a closure plan for the OB/OD Unit and a closure plan for the Kickout Area that complies with the conditions in the draft permit. After submission and approval, the new closure plans will be incorporated into the permit as Permit Attachment 9. Army is also required to submit a summary of historical information pertaining to the OB/OD Unit and a proposed permit modification to include a Corrective Action Management Unit for management of waste generated during closure activities

Permit Part IV (Confirmation of Kickout Area and Periodic Removal) contains permit conditions authorized under 20.4.1.500 NMAC (incorporating 40 CFR 264.101) and 20.4.1.900 NMAC (incorporating 40 CFR 270.32(b)(2)). Notable conditions include the following:

Permit Condition IV.A (Confirmation of Kickout Area) requires Army to confirm the extent of the Kickout Area by conducting a geophysical investigation. This condition will ensure that the security fence encompasses the entire Kickout Area and that the locations of waste military munitions in the Kickout Area are known for the purposes of off-site corrective action, the Community Relations Plan, and the Military Munitions Map and Table.

Permit Condition IV.B (Annual Inspection and Removal) and Permit Condition IV.C (Geophysical Investigation and Removal) requires Army to conduct annual visual inspections and geophysical investigations every five years of the Kickout Area and OB/OD Unit to remove waste military munitions. Part III requires removal of 100% of the detected anomalies during closure activities and subsequent investigations. However, as a practical matter, current technology cannot guarantee 100% detection of all waste military munitions released at the Facility. Therefore, some waste military munitions will likely remain at the Facility after completion of closure. These waste

military munitions pose a continuing threat to human health and the environment. Accordingly, the Army is required to conduct annual visual inspections and geophysical investigations to discover and remove waste military munitions that may be exposed due to erosion or lifted to the surface through freeze and thaw cycles. The five-year time period for geophysical investigations will allow for two investigations during the term of the permit and will provide sufficient data to inform NMED and Army of the success of the investigations and the continuing need for periodic investigation and removal in the future.

Permit Part V (Facility-Wide Ground Water Monitoring) contains permit conditions designed to integrate ground water monitoring on a facility-wide basis. These permit conditions are authorized by 20.4.1.500 NMAC (incorporating 40 CFR 264.101). After submission and approval, the facility-wide ground water monitoring program will be incorporated into the permit as Permit Attachment 10.

Permit Part VI (Ground Water Investigation and Ground Water Corrective Action For the OB/OD Unit) contains permit conditions authorized under 20.4.1.500 NMAC (incorporating 40 CFR part 264, subpart F). Exceedences of health-based standards for ground water have been detected at the OB/OD Unit for RDX, perchlorate, 2,4-dinitrotoluene, 4-amino-2,6-dinitrotoluene, 2-amino-4,6-dinitrotoluene, cadmium, chromium, selenium, and lead. *See Final Open Burning/Open Detonation Area, RCRA Interim Status Closure Plan, Phase 1B* (December 29, 1999). Therefore, the Army is required to implement a Ground Water Corrective Action Program pursuant to 20.4.1.500 NMAC (incorporating 40 CFR 264.100). However, before the Army can design and implement a corrective action program, Army must gather additional information required under Permit Condition VI.A (Ground Water Investigation). After completion of the investigation, Army must initiate a permit modification to establish the corrective action program. Upon approval of the permit modification, the corrective action program for the OB/OD Unit will be incorporated into the permit as Permit Attachment 11.

Permit Part VII (Corrective Action Program For SWMUs and AOCs) contains permit conditions necessary to meet the corrective action requirements of 42 U.S.C. 6924(u) and 20.4.1.500 NMAC (incorporating 40 CFR 264.101). These conditions follow standard EPA guidance for conducting corrective action at RCRA facilities.

Under Part VII, Army must first determine the full nature and extent of contamination at each SWMU and AOC identified in the draft permit and then, if necessary, conduct a remedy analysis for each SWMU and AOC. A final corrective measure for each SWMU or AOC will be incorporated into the permit through a permit modification. Investigations, remedy analyses, and remedy implementation must comport with the Scope of Work documents in Permit Attachment 4 (RCRA Facility Investigation Scope of Work), Permit Attachment 5 (Corrective Measures Study Scope of Work), Permit Attachment 6 (Corrective Measures Implementation Scope of Work), and Permit Attachment 7 (Cleanup Levels). A list of all SWMUs and AOCs at FWDA, based on the administrative record, is specified in Permit Attachment 8 (Hazardous Waste Management Unit, Solid Waste Management Unit, and Area Of Concern Tables).

NMED proposes that Army conduct investigations of SWMUs and AOCs in phases depending on the land parcels on which the SWMUs or AOCs are located. *See* Permit Part VII, Table 7.2. NMED invites public comment regarding the appropriate priority ranking and scheduling for investigation of SWMUs and AOCs located at FWDA.

Army is also required to immediately conduct two interim measures at the facility. These interim measures must comport with Permit Attachment (Interim Measures Scope of Work) and are necessary to limit or prevent human and environmental exposure to hazardous waste or hazardous constituents while final corrective measures are evaluated:

Permit Condition VII.G.2.a (Sampling of Off-site Water Supply Wells) requires Army to sample off-site water supply wells within a quarter mile of the facility. This condition is necessary to ensure that the public is not using contaminated ground water released from the Facility and to minimize or prevent human exposure to, and the further migration of, hazardous waste or constituents while final corrective measures are evaluated.

Permit Condition VII.G.2.b (Cleanup of Kickout Beyond the Facility Boundary) requires Army to conduct a geophysical investigation to discover and remove any waste military munitions which were “kicked out” and released beyond the facility boundary during operations of the OB/OD Unit. This condition is necessary to prevent human and environmental exposure to waste military munitions beyond the Facility boundary while final corrective measures are evaluated.

Permit Part VIII (Schedule of Compliance) contains permit conditions requiring the Army to provide certain items either missing from or deficient in the Application, including historical information relating to the OB/OD unit, SWMUs and AOCs, closure submittals, a facility topographic map, and hydrogeologic information. These conditions are authorized by 20.4.1.500 NMAC (incorporating 40 CFR 264.101) and 20.4.1.900 NMAC (incorporating 40 CFR 270.33).

PUBLIC PARTICIPATION

Availability of Additional Information: A copy of the draft permit, public notice, and the fact sheet may be reviewed at the following locations during the public comment period:

NMED - Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
Phone: (505) 428-2500
Monday – Friday: 8:00 a.m. to 5:00 p.m.

Octavia Fellin Public Library
115 West Hill Ave
Gallup, New Mexico 87301
(505) 863-1291
Monday-Thursday: 9:00 a.m. to 8:00 p.m.
Friday: 10:00 a.m. to 6:00 p.m.
Saturday: 9:00 a.m. to 6:00 p.m.

A copy of the draft Permit, Fact Sheet, and Public Notice are also available on the NMED website at www.nmenv.state.nm.us/HWB/fwdaperm.html under Draft Permit. The Administrative Record may also be reviewed at the NMED – Hazardous Waste Bureau at the address given above. To obtain a copy of the Administrative Record or a portion thereof, please contact Pam Allen at (505) 428-2531, or at the NMED address given above. NMED will provide copies, or portions thereof, of the Administrative Record at a charge of \$0.25 per page.

Comment Period and NMED Contact: Any person who wishes to comment on the draft Permit or request a public hearing should submit written or electronic mail (e-mail) comment(s) with the commenter's name and address to the address below. The comment period begins on **September 14, 2004** and ends on **December 13, 2004**. Only comments and/or requests received on or before **5:00 p.m. December 13, 2004** will be considered.

John E. Kieling, Program Manager
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Ref: Fort Wingate Depot Activity - Draft Permit

Written comments must be based on available information for review and include, to the extent practicable, all referenced factual materials. Documents in the administrative record need not be re-submitted if expressly referenced by the commenter. Requests for a public hearing must provide: (1) a clear and concise factual statement of the nature and scope of the interest of the person requesting the hearing; (2) the name and address of all persons whom the requestor represents; (3) a statement of any objections to the draft permit, including specific references to any Permit conditions being addressed; and (4) a statement of the issues which the commenter proposes to raise for consideration at the hearing. NMED will provide a thirty (30) day notice of a public hearing, if scheduled.

Final Decision: NMED must ensure that the approved draft permit is consistent with RCRA, the HWA, and HWMR. All written comments submitted on the draft permit will become part of the administrative record, be considered in formulating a final decision, and may cause the draft permit to be modified. NMED will respond in writing to all public comments. NMED's response to comments will specify which provisions, if any, of the draft permit have been changed in the final Permit decision, the reasons for the change, and will briefly describe and respond to all public comments on the draft permit or the permit application raised during the public comment period. NMED's response to comments will also be posted on the NMED website in addition to being sent to all persons who submitted written comments.

After consideration of all the written public comments received, NMED will either issue or modify and issue the Permit. If NMED modifies and issues the Permit, then the Permittee shall be provided by certified mail a copy of the modified permit and a detailed written statement of

reasons for the modifications. The Secretary of the New Mexico Environment Department will make the final Permit decision publicly available.

The Secretary's final permit decision shall constitute a final agency decision and become effective thirty days after notice of the decision has been served on the Applicant, or such later time as the Secretary may specify. All persons on the facility mailing list, persons that presented written comments, or who requested notification in writing, will be notified of the Secretary's final decision by mail. The final agency decision may be appealed as provided by the Hazardous Waste Act, Section 74-4-14, NMSA 1978.

Arrangements for Persons with Disabilities: Any person with a disability requiring assistance or auxiliary aid to participate in this process should contact Judy Bentley at the following address: New Mexico Environment Department, Room N-4030, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico 87502-6110, (505) 827-2844. TDD or TDY users please access Judy Bentley's number via the New Mexico Relay Network. Albuquerque users may access Ms. Bentley's number at (505) 275-7333.