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**PUBLIC NOTICE NO. 03-12**

**NEW MEXICO ENVIRONMENT DEPARTMENT  
HAZARDOUS WASTE BUREAU  
SANTA FE, NM 87505**

**NOVEMBER 26, 2003**

**NOTICE OF PUBLIC COMMENT PERIOD AND PUBLIC HEARING**

**CONCERNING INTENT TO APPROVE AN AGENCY-INITIATED MODIFICATION  
TO THE  
HAZARDOUS WASTE FACILITY PERMIT  
FOR THE  
WASTE ISOLATION PILOT PLANT  
CARLSBAD, NEW MEXICO  
EPA ID NO. NM4890139088**

The New Mexico Environment Department (**NMED**) proposes to approve an agency-initiated modification to the Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (**WIPP**) pursuant to the New Mexico Hazardous Waste Act, NMSA 1978 §§ 74-4-1 et seq. (Repl. Pamp. 2000). This modification would limit waste eligible for disposal at WIPP to the inventory identified when the permit was originally issued. The WIPP facility is owned and operated by the US Department of Energy (**DOE**) and co-operated by Washington TRU Solutions LLC (**the Permittees**). WIPP is located north of the Jal Highway (State Highway 128) in Eddy County, New Mexico, approximately 26 miles east of Carlsbad.

NMED announces both the availability of the WIPP draft permit for public comment and a public hearing, if requested, to consider public comment prior to issuance of a final permit incorporating the modification. NMED also

announces the availability of a fact sheet that sets out in detail the principle basis for NMED's decision to approve the permit modification request, and the significant factual, legal and policy questions considered in preparing the draft permit.

When the Permittees were preparing the RCRA permit application for disposal activities at WIPP during 1995 and 1996, they developed a "baseline inventory report" required by Congress in the WIPP Land Withdrawal Act. The Permittees relied upon this inventory for waste stream descriptions to help satisfy, in part, the waste characterization requirements of RCRA. The Permittees also used information presented in this baseline inventory to perform a waste compatibility analysis for the anticipated disposal inventory. NMED's issuance of the final permit on October 27, 1999 was based on the assumption that all information contained in the permit application and the administrative record was accurate, including the representation

that the baseline inventory reflected the total DOE TRU waste inventory. Although the Permittees have not released a revised baseline inventory since that time, DOE has made it clear in other venues that it intends to dispose of waste at WIPP that was not included in the original baseline inventory. The New Mexico Hazardous Waste Regulations provide a mechanism for NMED to modify an existing RCRA permit for cause upon the receipt of information that was not available at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance. This modification would limit waste eligible for disposal at WIPP to the inventory identified when the permit was originally issued.

### **PUBLIC REVIEW OF THE DRAFT PERMIT**

A copy of the WIPP draft permit and the fact sheet may be reviewed at: New Mexico Environment Department, Hazardous Waste Bureau, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico, 87505, (505) 428-2517, Attn: Mr. Steve Zappe; and on the NMED web site (<http://www.nmenv.state.nm.us/wipp>). The entire administrative record for this administrative action may be reviewed at the Hazardous Waste Bureau at above address.

### **PUBLIC HEARING**

NMED will conduct a public hearing only if, prior to January 30, 2004, it receives a timely request for public hearing as set forth below. If the Secretary of the NMED does not receive a request for public hearing, then the Secretary will cancel the public hearing and directly notify the public of that decision no later than February 16, 2004, in the following manner: (1) NMED will provide written notice to all persons submitting written comment or who request to be notified of the cancellation of the hearing; and (2) NMED will publish a notice of cancellation of the public hearing in a newspaper of general circulation.

If NMED holds a public hearing, it will be to accept additional public comment on the draft permit. The hearing will begin Tuesday, April 6, 2004 at 9:00 a.m., and be located at the Harold Runnels Building Auditorium, 1190 S. St. Francis Drive, Santa Fe, NM. The public hearing will provide interested persons a reasonable opportunity to present data, views, and

arguments, as well as to examine witnesses. The hearing will continue daily with morning, afternoon, and evening sessions as appropriate, until all persons have been afforded an adequate opportunity to present comment. The hearing will be conducted in accordance with the Hazardous Waste Management Regulations, 20.4.1.901.F NMAC, and the following sections of the Environment Department Permit Procedures, 20.1.4 NMAC:

20.1.4.1 – .8	20.1.4.200.D
20.1.4.100	20.1.4.300
20.1.4.200.A(1) & (2)	20.1.4.400.B & C
20.1.4.200.B	20.4.1.500.A – C
20.1.4.200.C(3)	

### **PUBLIC COMMENT**

Any person, including the Permittees, wishing to submit written public comment or present oral public comment at the public hearing for NMED's consideration, shall do so according to the procedures set forth below. The public comment period commences on the date of this notice and continues through the public hearing.

#### **A. WRITTEN PUBLIC COMMENT AND REQUESTS FOR PUBLIC HEARING**

NMED will accept written public comment and requests for public hearing on or before January 30, 2004. Written comments shall be based on all reasonably available information and include, to the extent practicable, all referenced factual materials. All requests for public hearing shall 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 requester represents; (3) a statement of any objections to the permit modification, including specific references; and (4) a statement of the issues which such persons proposes to raise for consideration at the hearing. Documents in the administrative record need not be re-submitted if expressly referenced by the commentator. Written comment and requests for public hearing must be filed with Mr. Steve Zappe on or before January 30, 2004 at NMED Hazardous Waste Bureau, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico, 87505.

## B. ORAL PUBLIC COMMENT

At the public hearing, NMED will accept technical and non-technical oral comment. The Hearing Officer will set reasonable limits upon the time allowed for oral comment. Oral comment on the draft permit shall be accepted at the public hearing as set forth below:

1. **Non-Technical:** Any person may present non-technical oral public comment at the hearing. The Hearing Officer will reserve time for non-technical oral comment at 11:30 AM each day of the public hearing, and at 6:00 PM on the first and second days of the hearing. Any person may file non-technical written comment in lieu of oral comment on or before the date of the hearing with the Hearing Clerk at NMED, Room N-4071, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico.

2. **Technical:** Any persons, including the Permittees, who wish to present technical oral comment shall file a *Notice of Intent to Present Technical Testimony* on or before March 8, 2004 with the Hearing Clerk at the address provided above. Technical testimony is defined as scientific, engineering, economic or other specialized testimony, and can be in either written or oral form. Technical testimony does not include legal argument, general comments, or statements of policy concerning matters at issue in the hearing. To promote efficiency, fairness and avoid prejudice and surprise, technical oral comment will be restricted to points and factual information raised in written comment with the exception of rebuttal, as appropriate. The *Notice* shall contain the following information:

- A. **Person/Entity:** Identify the person or entity filing the *Notice*;
- B. **Position:** State whether the person or entity filing the *Notice* supports or opposes the revised draft permit;

- C. **Witnesses:** Identify each witness, including name, address, affiliation(s), and educational and work background;

- D. **Length of Testimony:** Estimate the length of the direct testimony of each witness;

- E. **Exhibits:** Identify all exhibits; for all exhibits that are not part of the Record Proper, attach a copy;

- F. **Technical Materials:** Identify all technical materials relied upon by each witness in making a statement of technical fact or opinion contained in the direct testimony; Attach a copy of such technical materials for the Record Proper; submit a copy of such technical materials to the Hearing Clerk concurrently with the filing of the notice;

- G. **Direct Testimony:** Attach a summary of direct testimony of each witness, stating any facts or opinion(s) to be offered by such witness and explaining the basis for such facts or opinion(s); summaries of testimony shall be comprehensive, substantive and provide sufficient detail to avoid surprise, prejudice and allow for effective cross-examination. Any summary that does not meet this requirement shall be excluded. Oral public comment shall be limited to written public comment as provided above.

3. The failure to file a timely *Notice of Intent to Present Technical Testimony* meeting the requirements above shall preclude a person from presenting technical oral comment, but shall not preclude a person from presenting non-technical oral comment.
4. The requirements for presenting oral comment shall not apply to NMED. NMED will not present written or oral comment on the draft permit, but reserves the right to file a *Notice of*

*Intent to Present Technical Testimony* so that it may present testimony at the public hearing.

(b) briefly describe and respond to all public comments on the draft permit or the permit application raised during the public comment period or public hearing.

### C. PARTY STATUS

1. Any persons, including the Permittees, who wish to be a party for purposes of public participation at the hearing shall file either a timely *Notice of Intent to Present Technical Testimony* or a timely *Entry of Appearance* on or before March 8, 2004 to the Hearing Clerk at the address provided above. The *Entry of Appearance* shall include the following:
  - A. Person: The person or entity filing the entry and current address for written notification;
  - B. Position: State whether the person or entity supports or opposes the revised draft permit; and
  - C. Length of Testimony: Provide an estimate of the amount of time for oral comment, if any.
2. The failure to file a timely *Entry of Appearance* shall preclude a person from being a party in the proceeding, but shall not preclude a person from presenting non-technical oral public comment at the hearing.
3. The Department may file an *Entry of Appearance* to participate at the public hearing.

The Secretary will make the final permit decision publicly available and shall notify the Permittees by certified mail; all persons presenting written comment, who filed an *Entry of Appearance* or requested notification in writing shall be notified of the decision by first-class regular mail. The Secretary's decision shall constitute a final agency decision and may be appealed as provided by the Hazardous Waste Act.

### ARRANGEMENTS FOR PERSONS WITH DISABILITIES

Any person with a disability requiring assistance or auxiliary aid to participate in this process should contact Cliff Hawley or Alex Mendiola by March 8, 2004, 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 Mr. Hawley's number via the New Mexico Relay Network. Albuquerque users may access Mr. Hawley's number at (505) 275-7333.

### ADDITIONAL INFORMATION

Any person seeking additional information regarding this draft permit, or who would like to arrange for copies of the draft permit at 35 cents a page after the first 80 pages, may contact Mr. Steve Zappe at the Hazardous Waste Bureau, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505, (505) 428-2517.

### PROCEDURE OF ISSUANCE OF FINAL PERMIT DECISION

NMED will respond in writing to public comments prior to proposing a final decision to the Secretary. The Secretary will issue a final permit decision and response to comments. This response shall:

- (a) specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and