



State of New Mexico
ENVIRONMENT DEPARTMENT
Hazardous Waste Bureau



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PUBLIC HEARING NOTICE NO. 18-07

**NEW MEXICO ENVIRONMENT DEPARTMENT
 HAZARDOUS WASTE BUREAU
 NOTICE DATE: SEPTEMBER 22, 2018**

**NOTICE OF PUBLIC HEARING AND OPPORTUNITY FOR PUBLIC COMMENT ON DRAFT
 HAZARDOUS WASTE FACILITY PERMIT FOR THE
 WASTE ISOLATION PILOT PLANT
 EPA ID No. NM4890139088**

The New Mexico Environment Department (“**Department**”) is providing this public notice of a public hearing, and the opportunity for the public to provide comment, on a pending action before the Secretary of the Department regarding the Waste Isolation Pilot Plant (“**WIPP**”, or the “**Facility**”). Specifically, the Department has released a draft hazardous waste permit (“**Permit**”) that includes modifications to distinguish how WIPP calculates final disposal volumes of transuranic (“**TRU**”) mixed waste in accordance with the New Mexico Hazardous Waste Act (“**HWA**”), NMSA 1978, §§ 74-4-1 to -14, and the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC (“**HWMR**”). The Department is charged with issuing a permit that will ensure that WIPP’s hazardous waste operations are managed in a manner protective of human health and the environment.

WIPP is located north of Jal Highway (State Highway 128) in Eddy County, New Mexico, approximately 26 miles east of Carlsbad. WIPP is a hazardous waste facility currently operating under a Permit issued by the Department authorizing the management, storage, and disposal of TRU mixed waste at the Facility. Mixed waste is radioactive waste that is also a hazardous waste as defined by the HWA and is thus subject to regulation by the Department. The U.S. Department of Energy (“**DOE**”) owns and operates the Facility, and Nuclear Waste Partnership LLC, (“**NWP**”) co-operates the Facility. DOE and NWP are collectively referred to as the “**Permittees**”.

WIPP is a facility at which Congress authorized the disposal of TRU radioactive waste materials generated by atomic energy defense activities. WIPP manages wastes that are regulated under the federal Resource Conservation and Recovery Act (“**RCRA**”), the HWA and the HWMR. WIPP received a hazardous waste facility Permit from the Department in 1999 to dispose of TRU mixed waste containers 2,150 feet below ground in a mined geologic repository. The containers of waste must undergo complete waste characterization by the generator/storage sites in compliance with requirements of the Permit prior to disposal. WIPP is permitted to accept contact-handled TRU waste containers with a surface dose of less than 200 millirem per hour that may be handled directly. WIPP is also permitted to accept remote-handled TRU waste containers with a surface dose of 200 millirem or greater that must be handled either remotely or with sufficient shielding to reduce the effective dose.

The Permittees may be contacted at the following mailing addresses: DOE Carlsbad Field Office, P.O. Box 3090, Carlsbad, New Mexico 88221-3090; and Nuclear Waste Partnership LLC, P.O. Box 2078,

Carlsbad, New Mexico 88221-2078. The Permittees' primary contact for this permitting action is: Mr. Mike Brown, Director, Office of Environmental Protection, DOE Carlsbad Field Office, P.O. Box 3090, Carlsbad, New Mexico 88221-3090.

NOTICE OF HEARING AND OPPORTUNITY TO COMMENT

The Permittees submitted a Class 2 permit modification request on January 31, 2018 entitled "*Clarification of TRU Mixed Waste Disposal Volume Reporting.*" The Permittees published a public notice on February 2, 2018 that commenced a 60-day public comment period, which ended on April 3, 2018. Public meetings were held in Carlsbad and Santa Fe on March 6 and 8, 2018, respectively. On June 1, 2018, the Department determined that it was appropriate to process the Class 2 modification as a Class 3 modification due to significant public concern and the complex nature of the proposed change. The Department continued to review the modification under Class 3 procedures. On June 22, 2018, the Department issued an Administrative Completeness Determination. On June 27, 2018, the Department issued a Technical Incompleteness Determination ("**TID**"), requesting clarification and additional information. The Permittees provided a response on July 12, 2018. After reviewing this response, the Department issued a draft Permit on August 6, 2018 for a 45-day public comment period that ended on September 20, 2018.

The modification proposes to distinguish how the Permittees calculate final TRU mixed waste volumes for the purposes of reporting and comparing these volumes to the maximum hazardous waste disposal unit ("**HWDU**") capacities prescribed by Permit Part 4, Table 4.1.1, *Underground HWDUs*, so that capacities in the Permit, which are limited by the physical volume of each mined HWDU, are not exceeded. This permit modification request also proposes to distinguish between the RCRA TRU mixed waste volume and the Land Withdrawal Act ("**LWA**") TRU waste volume. The RCRA TRU mixed waste volume is tracked and reported by the Permittees in Table 4.1.1 in accordance with Permit Part 6, Section 6.10.1., *Panel Closure*, pursuant to RCRA. The LWA TRU waste volume is tracked and reported by DOE internally pursuant to the LWA so that the LWA total capacity limit for TRU waste is not exceeded. Permit Parts 1, 3, 4, 6, and Permit Attachments A1, A2, B, C, G, H, H1, and J will change as a result of this modification.

This draft Permit was based on the modification request submitted on January 31, 2018, input from the public as provided during the first comment period, and the additional information requested by the Department in the TID. Numerous comments were received by the Department both in support and in opposition to the draft Permit.

Through this notice the Department announces a public hearing to accept additional public comment on the draft Permit and provide persons a reasonable opportunity to present testimony, as well as to examine witnesses on the draft Permit prior to issuance of a final decision. See *Public Hearing*, below, which addresses the public hearing and submission of public comment on this action.

PUBLIC HEARING

The public hearing will begin **Tuesday, October 23, 2018 at 9:00 AM MDT**. 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 also afford an opportunity for all persons to present comments. The public hearing will be held in Room 153 of the New Mexico State University Carlsbad Branch located at 1500 University Drive, Carlsbad, NM. The hearing will be conducted in accordance with the Hazardous Waste Management Regulations, 20.4.1.901.F NMAC, the Department Permit Procedures, 20.1.4 NMAC, and any scheduling and procedural orders as may be entered by the Hearing Officer.

Any person, including the Permittees, wishing to submit written public comment or present oral public comment at the public hearing for the Department's consideration, shall do so according to the procedures set forth below. The public comment period continues to the close of the public hearing.

A. WRITTEN PUBLIC COMMENT

The Department will accept written public comment on the draft Permit until the conclusion of the public hearing. Written comments shall be based on all reasonably available information 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. Written comment may be submitted to the Hearing Clerk on or before the close of the public hearing at the New Mexico Environment Department, Room S-2100, 1190 S. St. Francis Drive, P.O. Box 5469, Santa Fe, NM, 87502-5469. Written public comments may also be submitted at the public hearing.

B. TECHNICAL TESTIMONY AND ORAL PUBLIC COMMENTS

At the public hearing, the Department will accept technical testimony and non-technical oral comments. The Hearing Officer may set reasonable limits on the time allowed for technical testimony and oral comments. Technical testimony and oral comments on the draft Permit shall be accepted at the public hearing, in accordance with Department regulations as set forth below:

1. Technical Written Statements and Oral Testimony: Any person who intends to provide a technical written statement or technical oral testimony concerning the draft Permit, Application or Petition shall file a Statement of Intent to Present Technical Testimony on or before **October 9, 2018** with the Hearing Clerk at the address provided above.
 - (a) Content of Statement of Intent: The Statement of Intent to Present Technical Testimony shall:
 - (i) identify the person filing the statement;
 - (ii) state whether the person filing the statement supports or opposes the draft Permit;
 - (iii) identify each witness, including name, address, affiliation(s), and educational and work background;
 - (iv) estimate the length of the direct testimony of each witness;
 - (v) identify all exhibits which are part of the Record Proper and, for exhibits not part of the Record Proper, attach a copy;
 - (vi) list or make available all technical materials relied upon by each witness in making statement of technical fact or opinion contained in his or her direct testimony; and
 - (vii) attach the complete direct testimony in full narrative fashion.
2. Effect of Failure to File: Failure to file a timely Statement of Intent to Present Technical Testimony meeting the requirements above, pursuant to 20.1.4.300.B NMAC, shall preclude a person from presenting technical testimony, and if the person has not filed a timely Entry of Appearance, pursuant to 20.1.4.300.A NMAC, from being a party in the proceeding, but shall not preclude a person from presenting a general written or oral statement or non-technical testimony in the proceeding.
3. Oral Public Comments; Non-Technical Testimony: Any person may provide oral public comment or non-technical testimony concerning the draft Permit at the hearing. Public comment periods will be held at **5:00 PM** on each day of the hearing. The Hearing Officer may allow public comment at other times if it is requested based upon necessity.

PROCEDURE FOR ISSUANCE OF FINAL PERMIT DECISION

The Department must ensure that the approved final permit is consistent with the HWMR. All comments submitted on the draft Permit will be considered in formulating a decision on issuance of a final Permit and may cause the draft Permit to be modified or rejected.

The Department will respond in writing to all public comments received in accordance with Item II.A above. The response will specify whether the draft Permit has been approved, approved with changes, or the basis for rejection, if not approved. All persons presenting written comments or who requested notification in writing will be notified of Department's decision by mail. These responses will also be posted on the Department's website.

The Secretary of the Department or his designee will make the final permit decision publicly available and shall notify the Permittees by certified mail. The Secretary's decision shall constitute a final agency decision and may be appealed as provided by the HWA.

ADDITIONAL INFORMATION

Any person seeking additional information regarding this action, or who would like to arrange for review of the draft Permit or the Administrative Record, may contact Mr. Ricardo Maestas at the Hazardous Waste Bureau, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505, (505) 476-6000. A copy of the draft Permit, Fact Sheet, index to the Administrative Record, and this Public Notice are also available on the Department website at: <https://www.env.nm.gov/hazardous-waste/wipp/>. The Department will provide copies, or portions thereof, of the Administrative Record at a cost to the requestor in accordance with the Department's Inspection of Public Records Act policy.

ARRANGEMENTS FOR PERSONS WITH DISABILITIES

Any person having a disability and requiring assistance or auxiliary aid to participate in this process should contact Donna Wright no less than 10 days prior to the end of the public comment period at the following address: New Mexico Environment Department, P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502-6110, (505) 827-9769. TDD or TDY users please access Ms. Wright's number via the New Mexico Relay Network at 1 (800) 659-8331.

Non-Discrimination Statement

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's nondiscrimination programs, policies or procedures, you may contact:

Kristine Pintado, Non-Discrimination Coordinator
New Mexico Environment Department
1190 St. Francis Dr., Suite N4050
P.O. Box 5469
Santa Fe, NM 87502
(505) 827-2855
nd.coordinator@state.nm.us

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.