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PUBLIC NOTICE NO. 06-05

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

MARCH 28, 2006

NOTICE OF RESCHEDULED PUBLIC HEARING

**CONCERNING INTENT TO APPROVE A CLASS 3 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 the draft Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (**WIPP**), which was issued for public comment on November 23, 2005 pursuant to the New Mexico Hazardous Waste Act, NMSA 1978 §§ 74-4-1 through 74-4-14 and the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC. On February 27, 2006, NMED published a notice announcing a public hearing on the draft Permit. On that same date, NMED mailed a letter to each individual or organization that had submitted a notice of opposition and request for a hearing. The letter stated that NMED was convening a meeting pursuant to 20.4.1.901.A(4) NMAC on March 9, 2006 and invited them to discuss and attempt to resolve the issues giving rise to the hearing requests.

Meetings were held on March 9 and 10, 2006 among NMED, the WIPP Permittees (the US Department of Energy Carlsbad Field Office and Washington TRU Solutions, LLC), and individuals

or organizations that attended in response to the February 27, 2006 invitation. The participants agreed that significant progress was made during these meetings in resolving issues, and that more time was needed to engage in further negotiations. On March 13, 2006, the participants submitted a joint motion to reschedule the public hearing and extend procedural dates to the hearing officer. On March 14, 2006, the hearing officer partially granted the request and, during a telephone conference call with the participants, agreed to a new schedule for the public hearing.

NMED today announces a rescheduled public hearing to accept additional public comment on the draft Permit prior to issuance of a final permit incorporating the modification.

PUBLIC HEARING

The hearing will begin May 31, 2006 at 9:00 AM, and be located at the Best Western Stevens Inn (Guadalupe Room), 1829 S. Canal Street, Carlsbad, 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 in Carlsbad through June 6, 2006 with morning, afternoon, and evening sessions as appropriate. Beginning June 7, 2006 at 6:00 PM, the hearing will reconvene in the Santa Fe Community College Board Room (Room 223), 6401 Richards Avenue, Santa Fe, NM and continue through June 9, 2006, or 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 through .8
20.1.4.100
20.1.4.200.A(1) & (2)
20.1.4.200.B
20.1.4.200.C(3)
20.1.4.200.D
20.1.4.300
20.1.4.400.B & C
20.1.4.500.A through C

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 continues to the close of the public hearing.

A. WRITTEN PUBLIC COMMENT

NMED will accept written public comment on the draft Permit. 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 must be filed with the Hearing Clerk on or before the close of the public hearing at NMED, Room N-2150, 1190 S. St. Francis Drive, PO Box 26110, Santa Fe, NM, 87502.

B. TECHNICAL TESTIMONY AND ORAL PUBLIC COMMENTS

At the public hearing, NMED will accept technical testimony and non-technical oral comments. The Hearing Officer will set reasonable limits upon 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 as set forth below:

1. **Non-Technical:** Any person may present non-technical oral public comments at the hearing. The Hearing Officer has reserved specific times for non-technical oral comments during each day of the public hearing. Non-technical comments will be heard each day (except June 4) in Carlsbad at 11:30 AM and 3:00 PM, and at 7:00 PM on May 31, June 1, 2, and 3. Non-technical comments will be heard in Santa Fe at 6:00 PM on June 7 and 8, and at 11:30 AM and 3:00 PM on June 8 and 9. Any person may file non-technical written comments in lieu of oral comments on or before the date of the hearing with the Hearing Clerk at NMED, Room N-2150, 1190 S. St. Francis Drive, PO Box 26110, Santa Fe, NM, 87502.
2. **Technical:** Any persons, including the Permittees, who wish to present oral technical testimony shall file a *Notice of Intent to Present Technical Testimony (Notice)* on or before May 17, 2006 with the Hearing Clerk at the address provided above. Persons who file timely *Notice of Intent to Present Technical Testimony* shall automatically be deemed to have party status. 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, oral technical testimony will be restricted to 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 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 pre-hearing challenges, if any, and effective cross-examination. As to witnesses

proposing to offer technical opinion(s) in the nature of expert testimony, any summary that does not meet this requirement shall be grounds for excluding the witness' testimony. 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.

C. PARTY STATUS, PRE-HEARING CONFERENCE, & PRE-HEARING ORDER

- 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 May 17, 2006 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 of Appearance* and current address for written notification;
 - B. Position: State whether the person or entity supports or opposes the draft Permit; and
 - C. Length of Testimony: Provide an estimate of the amount of time for oral technical testimony, if any.
- 2. The failure to file a timely *Entry of Appearance* shall preclude a person who has not timely filed a *Notice of Intent to Present Technical Testimony* from being a party in the proceeding, but shall not preclude a person from presenting non-technical oral public comments at the hearing.

3. All parties shall be prepared for, and shall participate in, a telephonic pre-hearing conference to be initiated by the hearing officer and to be held within one week after May 17, 2006, to discuss all logistical and evidentiary issues that can reasonably be anticipated in advance.

Room N-4030, 1190 S. St. Francis Drive, PO Box 26110, Santa Fe, NM 87502, (505) 827-9872. TDD or TDY users please access Ms. Bentley's number via the New Mexico Relay Network at 1-800-659-8331. Albuquerque users may access Ms. Bentley's number at (505) 275-7333.

PROCEDURE OF ISSUANCE OF FINAL PERMIT DECISION

NMED must ensure that the approved final permit is consistent with the New Mexico Hazardous Waste Management Regulations (20.4.1 NMAC). All written comments submitted on the draft Permit will 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 will specify which provisions, if any, of the draft Permit have been changed in the final permit decision, the reasons for the change, and briefly describe and respond to all public comments on the draft Permit or the PMR raised during this and prior public comment periods. All persons presenting written comments or who requested notification in writing will be notified of NMED's decision by mail. This response will also be posted on the NMED WIPP website.

After consideration of all the written public comments received, NMED will issue, modify and issue, or not issue the permit. If NMED modifies and issues the permit, the Permittees shall be provided by mail a copy of the modified permit and a detailed written statement of reasons for the modifications.

The NMED Secretary 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 Hazardous Waste, NMSA 1978 §§ 74-4-1 through 74-4-14.

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,

ADDITIONAL INFORMATION

Any person seeking additional information regarding this draft Permit, or who would like to arrange for copies of the draft Permit or portions of the administrative record at a reasonable cost to the requestor, may contact Mr. James P. Bearzi at the Hazardous Waste Bureau, 2905 Rodeo Park Drive East, Building 1, Santa Fe, NM 87505, (505) 428-2500.