



BILL RICHARDSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT

Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

Telephone (505) 428-2500

Fax (505) 428-2567

www.nmenv.state.nm.us



RON CURRY
SECRETARY

DERRITH WATCHMAN-MOORE
DEPUTY SECRETARY

PUBLIC NOTICE NO. 06-04

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

FEBRUARY 27, 2006

NOTICE OF 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. This draft Permit considered both the consolidated permit modification request (**PMR**) submitted by the Permittees – the US Department of Energy Carlsbad Field Office (PO Box 3090, Carlsbad, NM 88221) and Washington TRU Solutions LLC (PO Box 2078, Carlsbad, NM 88221) – and all comments received during the public comment period on the PMR. NMED is proposing to approve the following modification requests, with and without changes, in the draft Permit:

- The management, storage, and disposal of remote-handled (**RH**) transuranic (**TRU**) mixed wastes pursuant to the 1992 Land Withdrawal Act.

- Significant changes to the TRU mixed waste characterization process.
- The creation of a new Section 311 waste confirmation process.
- Amend Module III - Container Storage to accommodate RH TRU mixed wastes.
- Amend Module III - Container Storage to increase contact-handled (**CH**) TRU mixed waste storage capacity.
- Increase the volume of TRU wastes that may be emplaced in each panel.
- Change the method for demonstrating that the WIPP underground disposal rooms comply with the environmental performance standards for volatile organic compounds, pursuant to Section 311.

The draft Permit does not include the following items that the Permittees proposed in the PMR:

- Performing Section 311 confirmation activities at WIPP until significant concerns regarding how the Permittees

will address any noncompliant waste found during confirmation are thoroughly addressed; and

- Designating separate holding areas for TRU mixed wastes awaiting or undergoing waste confirmation prior to storage and disposal.

NMED has also proposed a two-tier dispute resolution process in the draft Permit, which would apply in the following circumstances:

- The Permittees disagree, in whole or in part, with an audit finding by NMED; or
- The Permittees disagree, in whole or in part, with an evaluation by NMED of the Permittees' provisional approval of a generator/storage sites' Acceptable Knowledge (AK) Determination Request.

NMED today announces a 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 March 29, 2006 at 9:00 AM, and be located at the Lake Carlsbad Municipal Golf Course, 901 Muscatel Avenue, 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 April 5, 2006 with morning, afternoon, and evening sessions as appropriate. The hearing will reconvene April 6, 2006 at 7:00 PM in the Harold Runnels Building Auditorium, 1190 S. St. Francis Drive, Santa Fe, NM and continue in Santa Fe on April 7, 2006 from 9:00 AM until 5:00 PM. If necessary, the hearing will reconvene at the Lake Carlsbad Municipal Golf Course in Carlsbad on April 10, 2006 at 9:00 AM and continue through April 12, 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
20.4.1.500.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 in Carlsbad at 11:30 AM and 3:00 PM, and at 7:00 PM on March 29, 30, and April 3. Non-technical comments will be heard in Santa Fe during all sessions of the hearing. 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 March 15, 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 March 15, 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 March 15, 2006, to discuss all logistical and evidentiary issues that can reasonably be anticipated in advance.

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, 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.

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.