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State of New Mexico
ENVIRONMENT DEPARTMENT
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Santa Fe, New Mexico 87505-6303
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ENTERED



PETER MAGGIORE
SECRETARY

May 13, 2002

Dear Concerned Citizen:

Enclosed is the public notice from the New Mexico Environment Department (NMED) announcing its intent to approve a Class 3 modification to the Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (WIPP). The Permittees, the US Department of Energy and Westinghouse TRU Solutions LLC have submitted a permit modification request to establish new drum age criteria (DAC) for taking a representative headspace gas sample based on additional packaging configuration groups. The public notice 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.

All written public comment on the revised draft Permit must be received no later than 5:00 PM June 27, 2002]. The public hearing, if held, would begin August 26, 2002 in Santa Fe. Please refer to the public notice for procedures for submittal of written public comment and public participation at the public hearing.

NMED has also developed a fact sheet that sets forth the significant factual, legal, and policy questions considered in developing the draft Permit. This fact sheet is available on the NMED WIPP Information Page at <<http://www.nmenv.state.nm.us/wipp/>>, or may be obtained by writing to Mr. Steve Zappe at the address listed in the letterhead above, or calling Mr. Zappe at (505) 428-2517.

If you have any questions, or if there are any corrections necessary to your address, please contact Mr. Zappe of my staff at (505) 428-2517.

Sincerely,

John E. Kieling
Manager
Permits Management Program

Enclosure

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SECRETARY

PUBLIC NOTICE NO. 02-04

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

MAY 13, 2002

**NOTICE OF PUBLIC COMMENT PERIOD AND 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 a 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). The Permittees, the US Department of Energy Carlsbad Field Office (PO Box 3090, Carlsbad, NM 88221) and Westinghouse TRU Solutions LLC (PO Box 2078, Carlsbad, NM 88221) have submitted a permit modification request to establish new drum age criteria (**DAC**) for taking a representative headspace gas sample based on additional packaging configuration groups. The WIPP facility is located north of 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. The fact sheet also describes elements of the modification request that were denied by NMED and the imposition of additional requirements that were not requested by the Permittees but were deemed necessary by NMED.

On November 13, 2000, the Permittees submitted a Class 1 modification to NMED to establish a new method for determining the time a container must sit after packaging before it may be subjected to headspace gas sampling, known as drum age criteria (**DAC**). Shortly after receipt, NMED informally notified the Permittees that the request did not meet the criteria for a Class 1 modification and would be rejected. On December 7, 2000, the Permittees resubmitted the modification request as a Class 2 modification. Based upon the comments received from the public, NMED denied the modification on March 26, 2001. On May 1, 2001, the Permittees submitted a revised modification request, which was subject to public

comment through July 6, 2001. Prior to the end of the public comment period, the Permittees submitted comments and additional information to amend their modification request. On August 30, 2001, NMED reclassified the DAC modification to follow the procedures for Class 3 modifications, which include the development of a draft permit for public review and comment.

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 (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 June 27, 2002, 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 July 12, 2002, 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 August 26, 2002 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 NMAC 4.1.901.F, and the following sections of the Environment Department Permit Procedures, 20 NMAC 1.4:

100-116	301
201.A. and B.	302
202	402-403
203.C	501-503
204	

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 June 27, 2002. 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 June 27, 2002 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 during each day of the public 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 July 29, 2002 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.

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 July 29, 2002 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.

As soon as practicable, but in no event later than two weeks prior to the hearing, the Hearing Officer shall make a hearing schedule available for public participants and mail it to each person who files an *Entry of Appearance* or *Notice of Intent to Present Technical Testimony*.

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
- (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.

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.

ARRANGMENTS FOR PERSONS WITH DISABILITIES

Any person with a disability requiring assistance or auxiliary aid to participate in this process should contact Cliff Hawley by July 29, 2002, 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) 827-2850. 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 or 800-659-1779.

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.



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PETER MAGGIORE
SECRETARY

FACT SHEET
MAY 13, 2002

**NOTICE OF 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**

ACTION: The New Mexico Environment Department (**NMED**) intends to approve, subject to public review and comment, a Class 3 permit modification to establish new drum age criteria (**DAC**) for taking a representative headspace gas sample based on additional packaging configuration groups.

FACILITY: Waste Isolation Pilot Plant (**WIPP**)
Carlsbad, New Mexico

PERMITTEES: United States Department of Energy, owner and co-operator
Westinghouse TRU Solutions LLC, co-operator

PERMIT NO.: NM4890139088-TSDF

BACKGROUND

The WIPP Permit requires that most waste containers must be sampled for hazardous volatile organic compounds in the headspace (or void space) of the container before they can be accepted at WIPP. In order to ensure that these samples are representative of gases within the entire container, the Permit specifies a minimum number of days a container must sit after packaging before it can be sampled. This time period is known as the drum age criteria (**DAC**) and is a function of the physical form of the waste and the number of layers of packaging in the container. The DAC values currently in the Permit conservatively assume that there are five layers of plastic bags in debris waste containers and two layers in homogeneous solids and soil/gravel containers. The Permit does not

consider other specific packaging configurations that might occur in waste containers.

ADMINISTRATIVE HISTORY

On November 13, 2000, the Permittees submitted a Class 1 modification to NMED to establish new DAC for taking a representative headspace gas sample based on additional packaging configuration groups. NMED received this modification on November 18, 2000, and shortly thereafter notified the Permittees informally that the request did not meet the criteria for a Class 1 modification and would be rejected.

On December 7, 2000, the Permittees submitted a virtually identical request, replacing the November 13, 2000 Class 1 submittal with a

Class 2 modification. The Permittees also requested a temporary authorization (TA) to implement the new DAC under 20.4.1.900 NMAC (incorporating 40 CFR §270.42(e)) before action was likely to be taken on the modification request. On December 13, 2000, NMED initially approved the TA request but upon further analysis prompted by public comment, NMED rescinded the approval on December 22, 2000, stating that the Permittees' request failed to demonstrate why it was imperative for NMED to grant the temporary authorization, in this case outside the regulatory process for Class 2 permit modification. Upon receipt of a request by the Permittees to reconsider the rescission, NMED reiterated its position that the Permittees failed to demonstrate the necessity of implementing the TA.

Following the close of the public comment period for the Class 2 modification on February 9, 2001, NMED denied the DAC modification on March 26, 2001. NMED cited technical inadequacies, such as the complete failure of the Permittees to address how sites would obtain the required information necessary to determine the appropriate DAC, as the basis for the denial. NMED also stated that it was unable to approve the DAC modification "with changes" as allowed for Class 2 modifications because none of the commentors proposed sufficiently detailed changes to rectify the technical inadequacies they identified. Furthermore, NMED was unable to reclassify the DAC modification request to follow the more involved procedures for Class 3 modifications because the request was not approvable as submitted. Finally, NMED recommended that the Permittees resubmit the DAC modification request as a Class 3 modification, which would allow a potentially deficient request to undergo the notice of deficiency (NOD) and NOD response cycle prior to issuance of a draft permit, at which time it would be subject to additional public comment.

On May 1, 2001, the Permittees submitted a Class 2 modification request that included a revised DAC modification and a response to NMED comments on the previously denied submittal. Following the close of the public comment period on July 6, 2001, NMED did not approve the DAC modification "with changes" because the complex nature of these changes necessitated the development of a draft permit. Instead, NMED reclassified the modification

request on August 30, 2001 to follow the procedures for Class 3 modifications.

PROPOSED ACTION

NMED is issuing a draft permit for public comment that considers both the permit modification submittal by the Permittees and all comments received during the previous comment period. This draft permit is therefore a reflection of NMED's proposed action on those requests.

In the May 1, 2001 permit modification request, and subsequently in the comment documents submitted by the Permittees during the public comment period, the Permittees requested: the inclusion of additional tables for determining the DAC for several scenarios of waste and packaging configuration groups; specific sampling requirements; addition of several data fields to the WIPP Waste Information System; inclusion and definition of a "filtered inner lid"; and a description of the information requirements which must be documented for each container from which a headspace gas sample is collected. NMED is proposing to approve these modification requests, with and without changes, in the draft permit.

There are several items included in the modification request that NMED does not propose to approve. The Permittees included a packaging configuration that addressed taking a headspace gas sample from a direct loaded Ten-Drum Overpack (TDOP) container. NMED disapproved this packaging configuration because the current permit prohibits direct loading of TDOPs. The Permittees also sought an exemption from innermost layer of containment sampling for Waste Material Type II.2 packaged in a metal container. This language was removed by NMED because it was not included in the current permit and no justification was provided for its inclusion.

Based on public comments, NMED imposed a new condition that radiography and/or visual examination must be used with acceptable knowledge in order to determine and/or verify the appropriate packaging configuration group and sampling scenario for every container sampled. However, if this required information is not available or documented, samplers must use the most conservative assumption in choosing a

DAC. NMED has also imposed an additional requirement for a documented training program to ensure that the radiography test drum includes common waste packaging configurations and rigid liner vent hole diameters appropriate to the specific waste streams for which a waste stream profile form is sought. NMED integrated items into the audit checklists to reflect the DAC modifications sought by the Permittees and the additional conditions imposed by NMED. Finally, NMED inserted section subtitles, corrected several miscellaneous typographical and wording errors, and incorporated new wording and subtitle numbering as needed to conform with the permit modification requests and for consistency.

NMED believes the proposed modifications to incorporate additional DAC for other packaging configuration groups are just as protective of human health and the environment as the current permit. The additional DAC were calculated using the same methodology contained in the original permit application and approved for use in the current permit. Furthermore, NMED has imposed an additional level of conservatism in the application of the DAC by the generator/storage sites. If they are unable to document some of the critical parameters necessary to select the appropriate DAC from the modified tables in the draft permit, in some cases they will be forced to use a more conservative DAC (i.e., wait a longer time before sampling) than previously contained in the current permit.

AVAILABILITY OF ADDITIONAL INFORMATION

The Administrative Record for this proposed action consists of this Fact Sheet, the Public Notice, the permit modification request, all public comments received during the previous comment period, and other relevant correspondence. The administrative record may be reviewed from Monday through Friday 8:00 AM to 5:00 PM at the following location:

New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
Phone: 505-428-2517
Attn: Mr. Steve Zappe

To obtain a copy of the administrative record or any part thereof, please contact Mr. Steve Zappe of the New Mexico Environment Department at the above address. The draft permit is also available on the NMED web site (www.nmenv.state.nm.us/wipp).

PUBLIC COMMENT AND REQUEST FOR HEARING

Any person who wishes to comment on this permit modification or to request a Public Hearing should submit written comments/requests, along with the commentor's/requester's name and address, to Mr. Steve Zappe at the above address. All requests for 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 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. Written comment and requests for Public Hearing must be filed with Mr. Steve Zappe on or before June 27, 2002 at NMED Hazardous Waste Bureau, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico, 87505.

FINAL DECISION

All written comments received during the public notice period and issues raised at a Public Hearing, if held, will become part of the administrative record and will be considered in formulating the final decision. NMED may approve, modify and approve, or deny the requested permit modification based on the comments received. NMED will notify the Permittees and each person who submitted a written comment during the public comment period or testimony at a Public Hearing of the final decision, including any approved change to the proposed modification, and a detailed statement of reasons for any such change. The final decision will be made according to applicable State and Federal laws.