

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT

 ENTERED

CONCERNING INTENT TO APPROVE)
AN AGENCY-INITIATED MODIFICATION)
TO THE HAZARDOUS WASTE FACILITY) HWB 04-01 (M)
PERMIT FOR THE WASTE ISOLATION)
PILOT PLANT, CARLSBAD, NEW MEXICO)

NEW MEXICO ENVIRONMENT DEPARTMENT
HAZARDOUS WASTE BUREAU
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY

1. On November 26, 2003, the State of New Mexico Environment Department issued a Notice of Public Comment Period and Public Hearing in this matter. The Department gave notice that a hearing would be held beginning April 6, 2004, and that any persons who wish to present technical oral comment must file a Notice of Intent to Present Technical Testimony on or before March 8, 2004.
2. Person/entity: The New Mexico Environment Department, Hazardous Waste Bureau hereby states its intent to present technical testimony.
3. Position: The New Mexico Environment Department, Hazardous Waste Bureau, supports the draft permit issued by the Department as modified by the Southwest Research and Information Center in their comments filed January 30, 2004.
 - a. Witnesses: The New Mexico Environment Department, Hazardous Waste Bureau, will present the witness as described on Attachment A hereto.
4. Length of Testimony: It is expected that the direct testimony of the witness will last approximately 1 hour. It is unknown how long cross-examination by other parties will take.



5. Exhibits: All materials and exhibits relied upon by NMED witnesses will stem from the Administrative Record in this matter and publicly available materials and documents, including the Administrative Record for the original Permit issuance. No additional specific exhibits have been identified at this time, but NMED's Hazardous Waste Bureau reserves the right to identify further exhibits based upon the notices of intent filed by other parties, such as information obtained from the WIPP Waste Information System (WWIS) database.
6. Technical Materials: None, other than the information that is part of the Administrative Record.
7. Direct Testimony: A summary of the direct testimony of the witness is attached hereto as Attachment A.

Respectfully submitted,

Charles F. Noble
Assistant General Counsel

ATTACHMENT A

NMED Hazardous Waste Bureau Witness List

Witness #1

Name and address of witness:

Steve Zappe
NMED Hazardous Waste Bureau
2905 Rodeo Park Drive East, Bldg. 1
Santa Fe, NM 87505

Witness qualifications:

Mr. Zappe is currently a Staff Manager with the State of New Mexico in NMED's Hazardous Waste Bureau (**HWB**). Mr. Zappe has worked for HWB since 1994, serving as the WIPP permit writer through the initial 1999 WIPP public hearing on the original permit issuance. He currently serves as NMED's WIPP Project Leader, supervising a staff of three. Mr. Zappe holds a Bachelor of Science degree in Physics from California State University, Fresno, and a Master of Science degree in Geological Science from the University of California, Riverside.

The witness will testify to the following:

Mr. Zappe will summarize the administrative history of the permit in a manner consistent with the Fact Sheet issued November 26, 2003.

Mr. Zappe will summarize the draft permit modification released by NMED, including the basis and rationale for the conditions that NMED imposed in the draft permit. This testimony will also be consistent with the Fact Sheet issued November 26, 2003.

Mr. Zappe will summarize his understanding of all comments received on the draft permit. Mr. Zappe will also provide NMED's general response to many of the general issues raised in public comment received to date.

Mr. Zappe will summarize NMED's position that the proposed modification meets the regulatory standard for agency-initiated modifications specified in 20.4.1.900 NMAC (incorporating 40 CFR §270.41(a)(2)). Specifically, Mr. Zappe will present evidence that information which provides adequate cause for modification of the permit was not available at the time of permit issuance, and that such information would have justified the application of different permit conditions at the time of issuance of the original permit.

Mr. Zappe will present testimony related to the following assertions by the Permittees:

1. That more than 12,000 drum equivalents of waste from eight waste streams have been disposed of in the WIPP repository that are not directly traceable to the TWBIR.

2. That imposing the proposed permit modification is inconsistent with NMED's oral and written testimony at the original permit hearing or inconsistent with the hearing officer's report.
3. That the notification in the TWBIR regarding possible future TRU waste and the changing nature of the TWBIR preclude NMED from identifying any future information as "new" information.
4. That the information relied upon by NMED as the basis for the permit modification is not the type of information that would require or authorize an agency-initiated modification under 40 CFR §270.41(a).
5. That the proposed modification is outside the State's regulatory authority over WIPP.
6. That Section 311 of the 2004 Energy and Water Development Appropriates Act (Pub. L. 108-137) preempts NMED's authority to impose the conditions proposed in this permit modification.

Certificate of Service

I hereby certify that on March 8, 2004, a copy of the foregoing Notice of Intent to Present Technical Testimony was mailed to the following persons by first class mail:

Pete Domenici, Jr.
Dolan and Domenici, P.C.
6100 Seagull NE, Suite 205
Albuquerque, NM 87109

Don Hancock
Southwest Research and Information Center
105 Stanford, SE
Albuquerque, NM 87105

Add other names here...

Legal Assistant