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PUBLIC NOTICE No. 10-03

NEW MEXICO ENVIRONMENT DEPARTMENT
HAZARDOUS WASTE BUREAU
SANTA FE, NEW MEXICO
June 4, 2010

NOTICE OF PUBLIC COMMENT AND A PUBLIC HEARING ON THE DRAFT
HAZARDOUS WASTE PERMIT FOR THE
WASTE ISOLATION PILOT PLANT
EPA ID NUMBER: NM4890139088

The New Mexico Environment Department (**Department**) is providing this public notice on a public hearing, and the opportunity for the public to comment on, a pending action before the Department for the Waste Isolation Pilot Plant (**WIPP**, or the **Facility**). Specifically, the Department intends to issue a hazardous waste permit (**Permit**) to WIPP to manage, store, and dispose hazardous waste, and to close hazardous waste disposal units, in accordance with the New Mexico Hazardous Waste Act (**HWA**) and its implementing regulations. 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 a hazardous waste facility currently operating under a Permit issued by the Department on October 27, 1999, which authorizes the management, storage, and disposal of transuranic (**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 Carlsbad Field Office (**DOE**) owns and operates the Facility, and Washington TRU Solutions LLC (**WTS**) co-operates the Facility. These entities are collectively referred to as "Applicants" in this public notice.

WIPP manages wastes that are regulated under the federal Resource Conservation and Recovery Act (**RCRA**), the HWA (Chapter 74, Article 4 NMSA 1978), and their implementing regulations.

WIPP is located north of Jal Highway (State Highway 128) in Eddy County, New Mexico, approximately 26 miles east of Carlsbad. The Applicants are located at the following mailing addresses: DOE Carlsbad Field Office, P.O. Box 3090, Carlsbad, New Mexico 88221-3090; and Washington TRU Solutions LLC, P.O. Box 2078, Carlsbad, New Mexico 88221-5608. The Permittees' primary contact for this permitting action is: George Basabilvazo, Regulatory Compliance Director, DOE Carlsbad Field Office, P.O. Box 3090, Carlsbad, New Mexico 88221-3090.

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I. NOTICE OF HEARING AND OPPORTUNITY TO COMMENT ON THE DRAFT PERMIT

On September 25, 2009, the Applicants submitted to the Department a permit renewal application to manage, store, and dispose of TRU mixed wastes at WIPP under the HWA. The Department issued a draft Permit for WIPP for public comment on April 27, 2010, which it is proposing to approve.

The draft Permit, when finalized, would allow WIPP to continue hazardous waste management operations in much the same manner as those authorized by the existing Permit, such as: requiring generator/storage sites to implement applicable waste characterization requirements prior to the receipt of TRU mixed waste at WIPP; conducting waste characterization audits at generator storage sites to ensure their implementation of and compliance with applicable requirements; safely managing, storing, and disposing contact-handled and remote-handled TRU mixed waste upon receipt at WIPP; performing required environmental monitoring of air and groundwater at WIPP to ensure protection of human health and the environment; closing all permitted storage and disposal units following final receipt of waste; conducting required post-closure care activities after final closure of WIPP; and complying with corrective action requirements related to any release of hazardous waste or hazardous constituents from the Facility.

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

II. PUBLIC HEARING

The public hearing on the draft Permit will begin **Monday, August 9, 2010 at 9:00 AM MDT** and continue as necessary through **Friday, August 20, 2010**. 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 afford an opportunity for all persons to present comment. Except for one day as noted below, the public hearing will be held at the Santa Fe Community College (SFCC) located at 6401 S. Richards Avenue, Santa Fe, NM 87508, in the Board Room (Room 223). The hearing will convene for one day for non-technical oral public comment in Carlsbad, NM on **Monday, August 16, 2010 at 2:00 PM to 4:00 PM and 6:00 PM to 8:00 PM** at the Best Western Stevens Inn located at 1829 S. Canal Street, Carlsbad, NM 88220. The hearing will then return to Santa Fe the following day at the SFCC location noted above. The hearing will be conducted in accordance with the Hazardous Waste Management Regulations, 20.4.1.901.F NMAC, the Environment 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 Applicants, wishing to submit written public comment or present oral public comment at the public hearing for Department's consideration, shall do so according to the procedures set forth below. The public comment period continues through the close of the public hearing.

A. WRITTEN PUBLIC COMMENT

The Department 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 the New Mexico Environment Department, Room N-2153, 1190 S. St. Francis Drive, PO 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 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, 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 oral testimony concerning a Draft Permit, Application or Petition shall file a Statement of Intent to Present Technical Testimony on or before **July 16, 2010** with 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, Application, or Petition, or in the case of the Division, the Division's recommended decision to approve, deny, or approve with conditions the Draft Permit, Application, or Petition;
- (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 of fact or opinion contained in his or her direct testimony; and
- (vii) attach a summary of the testimony of each witness, stating any opinion(s) to be offered by such witness, and an explanation of the basis for such opinion(s).

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. **General Written and Oral Statements; Non-Technical Testimony:** Any person may provide a general written statement concerning the draft Permit at or before the hearing. Any person may provide a general oral statement or non-technical testimony concerning the draft Permit at the hearing.

PROCEDURE FOR ISSUANCE OF FINAL PERMIT DECISION

The Department 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 decision on issuance of a final Permit, and may cause the draft Permit to be modified.

The Department will respond in writing to all public comments. This response will specify which provisions, if any, of the draft Permit have been changed in the final Permit, the reasons for the changes, and briefly describe and respond to all public comments on the draft Permit raised during the public comment period. All persons presenting written comments or who requested notification in writing will be notified of the Department's decision by mail. These responses will also be posted on the Department's website.

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

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

ARRANGEMENTS FOR PERSONS WITH DISABILITIES

Persons having a disability and requiring assistance or auxiliary aid to participate in this process should contact Judy Bentley at the New Mexico Environment Department, Human Resources Bureau, P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone number: (505) 827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

ADDITIONAL INFORMATION

Any person seeking additional information regarding this action, or who would like to arrange for review of the draft Permit, Fact Sheet, or the Administrative Record, may contact Mr. Steve Zappe 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, the index to the Administrative Record, and this Public Notice are also available on the Department website at: www.nmenv.state.nm.us/wipp/index.html. The Department will provide copies, or portions thereof, of the Administrative Record at a cost to the requestor.