

STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT



IN THE MATTER OF THE RENEWED )  
HAZARDOUS WASTE FACILITY )  
PERMIT FOR THE WASTE ISOLATION )  
PILOT PLANT )

HWB 10-26(P)

**STIPULATED PRE-HEARING SCHEDULING AND PROCEDURAL ORDER**

This Scheduling and Procedural Order (“Scheduling Order”) sets forth the schedule and certain procedures for the hearing on the proposed Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (“WIPP”) that the New Mexico Environment Department (“Department”) proposes to issue to the United States Department of Energy and Washington TRU Solutions, LLC (collectively, the “Applicants”) under the New Mexico Hazardous Waste Act, NMSA 1978, §§ 74-4-1 to 74-4-14. The Department has issued Public Notice No. 10-03 (June 4, 2010) and published it in the Albuquerque Journal, Santa Fe New Mexican, Hobbs News-Sun, and Carlsbad Current-Argus. This Public Notice contains a schedule for the submission by any person who intends to provide a technical written statement or oral testimony concerning the draft permit of a Statement of Intent to Present Technical Testimony by July 16, 2010, and specifies the content of such a Statement of Intent.

1. Except as otherwise provided in this Scheduling Order or another order subsequent hereto, the Department’s Permit Procedures, 20.4.1 NMAC, and the permitting procedures of the Hazardous Waste Management Regulations, 20.4.1.901 NMAC, shall apply to this proceeding. However, the provisions of this Scheduling Order, in those cases where it differs, shall supersede the provisions of the Permit Procedures at 20.4.1 NMAC and the Hazardous Waste Management Regulations at 20.4.1.901 NMAC.



2. The Department has made available online a copy of the index to the Administrative Record on July 20, 2010.
3. All pre-hearing motions and pre-trial memoranda, if any, shall be filed in writing by July 30, 2010, except for motions filed later in response to written direct testimony or exhibits, or upon a showing of other good cause. Responses to motions filed by July 30, 2010 shall be filed no later than August 5, 2010. Motions and responses shall otherwise be in accordance with the Department's Permit Procedures, section 20.1.4.200(D) NMAC. This provision does not preclude the filing of motions on legal issues after the conclusion of the hearing.
4. A hearing will be held commencing on August 9, 2010, at 9:00 a.m., at the Santa Fe Community College in the Board Room (Room 223), continuing as necessary through August 20, 2010, provided that the hearing will convene in Carlsbad on Monday, August 16, 2010 at 2:00 p.m. to 4:00 p.m. and 6:00 p.m. to 8:00 p.m. at the Best Western Stevens Inn, to allow an opportunity for members of the public who are not parties to the proceeding to present public comment. Public comment will be taken on each hearing day in Santa Fe at 1:00 p.m. until public comment is completed and on Tuesday, August 10, 2010, at 6:00 p.m. to 8:00 p.m. All technical testimony will be presented in Santa Fe.
5. The scope of the hearing will be limited to the determination of whether the Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant should be issued or denied; whether any permit condition is inadequate, improper, or invalid; and whether any other proposed condition should be included in the permit. This provision does not preclude any party from raising jurisdictional, constitutional, or other legal challenges to any condition included in the permit.
6. The order of presentation of witnesses during the hearing shall be as follows:

- a. The Applicants shall present direct testimony of their witnesses, followed by cross-examination;
  - b. The Department shall present direct testimony of its witnesses, followed by cross-examination;
  - c. Concerned Citizens for Nuclear Safety shall present direct testimony of its witnesses, followed by cross-examination;
  - d. PECOS Management Services, Inc. shall present direct testimony of its witnesses, followed by cross-examination;
  - e. After the presentation of direct testimony by the parties listed in subparagraphs (a) through (d), the parties shall present rebuttal testimony, followed by cross-examination;
  - f. Time shall be allocated each day for members of the public to present public comment; and
  - g. The parties may agree to take individual witnesses out of order to accommodate their schedules.
7. No person shall be allowed to present technical or other expert testimony unless that person has filed a timely statement of intent to present technical testimony and one or more affidavits in accordance with Public Notice No. 10-03 (June 4, 2010).
  8. During the hearing each technical witness shall be allowed no more than sixty minutes to summarize his or her direct testimony. The witness's summary shall not cover subject matter not covered in that witness's affidavit. Each affidavit shall be marked as an exhibit and offered in evidence, subject to objections by any party.
  9. After a witness has summarized his or her direct testimony, the witness will be subject to cross-examination by the other parties. Cross-examination shall not cover subject matter not covered in the witness's direct testimony (written or oral). Cross-

examination of a witness by any party shall be limited to no more than sixty minutes. The Hearing Officer may also limit redirect examination and recross examination as appropriate to expedite the proceeding. Upon motion and a showing of good cause, the Hearing Officer may extend these time limitations. These limitations shall not in any way limit the amount of time for questioning of witnesses by the Hearing Officer, and such questioning by the Hearing Officer and the responses thereto shall not be counted toward any party's cross-examination or redirect examination time.

10. Requirements for written testimony and exhibits in Public Notice No. 10-03 (June 4, 2010) and the time limitations set forth in Paragraphs 8-9 shall not apply to rebuttal witnesses.

11. The parties have reviewed the Statements of Intent and prepared testimony filed on July 16, 2010, and agree that, as to each of the witnesses listed in this paragraph, the parties will forego cross examination, and such witness's direct testimony filed on that date may be placed in the Hearing Record as an exhibit with the same effect as if the witness appeared in person, was sworn, and offered the same testimony in evidence. The witnesses are:

- a. William A. Most
- b. Wayne Ledford
- c. Richard A. Salness
- d. Dennis Powers
- e. Richard Beauheim
- f. Scott T. Cassingham
- g. Michael B. Gross
- h. Thomas E. Lichty
- i. Robert J. Paslay

**j. Stanley J. Patchet**

**k. Susan E. McCauslin**

**12. At the conclusion of each day's hearing, the party calling witnesses shall notify the Hearing Officer and the other parties of the names of witnesses it anticipates calling the next day.**

**13. The Hearing Officer may enter a Post-Hearing Scheduling Order after the hearing, providing a schedule for oral closing arguments and a schedule and page limits for written closing arguments and proposed findings of fact and conclusions of law.**

  
**The Honorable Judge A. Joseph Alarid**  
**Hearing Officer**

Submitted on agreement of all parties, July 27, 2010

Approved:

*Heslie Barnhart*

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New Mexico Environment Department

/s/ approved by electronic mail  
U.S. Department of Energy

/s/ approved by electronic mail  
Washington TRU Solutions, LLC

/s/ approved by electronic mail  
Concerned Citizens for Nuclear Safety

/s/ approved by electronic mail  
Honor Our Pueblo Existence

/s/ approved by electronic mail  
Southwest Research and Information Center

/s/ approved by electronic mail  
Nuclear Watch New Mexico

/s/ approved by electronic mail  
Citizens for Alternatives to Radioactive Dumping

/s/ approved by electronic mail  
PECOS Management Services, Inc.

**CERTIFICATE OF SERVICE**

I certify that on July 28, 2010, I served this **STIPULATED PRE-HEARING SCHEDULING AND PROCEDURAL ORDER** electronically to the following parties of record:

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