



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Hazardous & Radioactive Materials Bureau
2044 Galisteo Street
P.O. Box 26110
Santa Fe, New Mexico 87502
(505) 827-1557
Fax (505) 827-1544



PETER MAGGIORE
SECRETARY

SENT VIA FAX

November 6, 1998

Ms. Leslie Nichols
Clovis News Journal
P.O. Box 1689
Clovis, NM 88101

Dear Ms. Nichols:

Please publish the enclosed Legal Notice in your Friday, November 13, 1998 edition. Please return a copy of the notice as published with a certificate of date published. Address the bill to:

New Mexico Environment Department
Hazardous and Radioactive Materials Bureau
Attn: Mr. Steve Zappe
P.O. Box 26110
2044-A Galisteo
Santa Fe, NM 87502

Thank you for your assistance. If you have any questions, please contact Mr. Steve Zappe at (505) 827-1560, x1013.

Sincerely,

A handwritten signature in cursive script that reads "Benito J. Garcia".
Benito J. Garcia

Chief, Hazardous and Radioactive Materials Bureau

Enclosure

981106



LEGAL NOTICE NO. 98-05

NEW MEXICO ENVIRONMENT DEPARTMENT
HAZARDOUS AND RADIOACTIVE MATERIALS BUREAU
SANTA FE, NM 87502

NOVEMBER 13, 1998

NOTICE OF PUBLIC HEARING
AND OPPORTUNITY TO PROVIDE PUBLIC COMMENT
FOR ISSUANCE OF A FINAL PERMIT
FOR THE WASTE ISOLATION PILOT PLANT
USEPA NO. NM4890139088

The New Mexico Environment Department (**Department**) proposes to issue a final permit for the storage and disposal of transuranic mixed waste at the Waste Isolation Pilot Plant (**WIPP**) pursuant to the New Mexico Hazardous Waste Act, NMSA 1978 §§ 74-4-1 et seq. (Repl. Pamp. 1992). The permit applicants are the owner and co-operator of the WIPP, the U.S. Department of Energy (**DOE**), Carlsbad Area Office, P.O. Box 3090, Carlsbad, New Mexico 88221, and the co-operator of the WIPP, Westinghouse Electric Company Waste Isolation Division (**WID**), P.O. Box 2078, Carlsbad, New Mexico 88221.

The Department announces the availability of a revised draft Permit for public comment and a public hearing to consider public comment for issuance of a final permit. The Department previously issued a draft Permit for the WIPP facility on May 15, 1998. The revised draft Permit incorporates public comment received by August 14, 1998. The Department's revisions to the May 15, 1998 draft Permit are indicated in redline/strikeout. A revised fact sheet is also publicly available that sets forth the significant factual, legal and policy questions considered in preparing the revised draft Permit.

The revised draft Permit authorizes DOE and WID to store and dispose transuranic mixed waste at WIPP, a geologic repository located approximately 26 miles east of Carlsbad, New Mexico. The repository is designed to dispose approximately 6.2 million cubic feet of transuranic and transuranic mixed waste in a 1,800 foot thick bedded-salt formation located 2,150 feet below ground surface.

PUBLIC HEARING ON THE WIPP DRAFT PERMIT

The Department will hold a public hearing to accept public comment on the revised draft Permit. The public hearing will begin at 9:00 a.m. on February 22, 1999, at Apodaca Hall, PERA Building, Old Santa Fe Trail, Santa Fe, New Mexico. The hearing will continue at 9:00 a.m. on March 8, 1999, at the Pecos River Conference Center, Room 4, Carlsbad, New Mexico. The hearing will reconvene, if necessary, in Santa Fe at Apodaca Hall, 9:00 a.m. on March 15, 1999. The hearing will continue daily with morning, afternoon, and evening sessions, as appropriate, until the Hearing Officer determines that all persons have been afforded an adequate opportunity to present public comment and cross-examine witnesses. The public hearing will be conducted in accordance with the Hazardous Waste Management Regulations, 20 NMAC 4.1.901.E.,

and the following sections of the Environment Department Permit Procedures, 20 NMAC 1.4:

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

PLEASE NOTE: The Department will accept technical and non-technical oral public comment at the Santa Fe portion of the public hearing. The Department will accept only non-technical oral public comment at the Carlsbad portion of the public hearing. Persons presenting oral public comment at the Santa Fe portion of the public hearing will not be available for cross-examination at the Carlsbad public hearing. The Hearing Officer will reserve time for non-technical oral public comment during each day of the public hearing.

The Secretary will appoint a Hearing Officer prior to the public hearing. All persons who wish to be notified of the appointment prior to the public hearing should request such notification from the Hearing Clerk at the address listed at the end of this Notice.

**PROCEDURES FOR SUBMITTAL OF WRITTEN PUBLIC COMMENT
AND PUBLIC PARTICIPATION AT THE PUBLIC HEARING**

Any person, including the applicants, who wishes to submit written public comment or present oral public comment at the public hearing on the revised draft Permit for the Department's consideration shall do so according to the procedures set forth below.

A. WRITTEN PUBLIC COMMENT

All written public comment shall be submitted on or before January 18, 1999. Written public comments shall be based upon all reasonably available information and include, to the extent practicable, all factual materials relied upon. Previously submitted documents in the administrative record, including public comments on the May 15, 1998 draft Permit, need not be re-submitted if expressly referenced by the commentor. Written public comment shall be filed at the address listed at the end of this Notice.

B. ORAL PUBLIC COMMENT

The public comment period provided above shall extend to the close of the public hearing to provide interested persons a reasonable opportunity to present data, views, arguments and to examine witnesses. The public hearing will be conducted so that all relevant views, arguments, and testimony are amply and fairly received without undue repetition. The Hearing Officer may set reasonable limits upon the time allowed for oral public comment. Oral public comment on the revised draft Permit shall be accepted at the public hearing as set forth below:

1. Any person may present non-technical oral public comment at the Santa Fe or Carlsbad portion of the public hearing, and,

may file non-technical written public comment in lieu of oral comment.

2. Any person may present technical oral public comment as technical testimony at the Santa Fe portion of the public hearing. Technical testimony is defined as scientific, engineering, economic or other specialized testimony, whether oral or written, but 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 public comment will be restricted to points and factual information raised in written public comment with the exception of rebuttal, as appropriate. All persons, including the applicants, who wish to present technical oral public comment shall file a *Notice of Intent to Present Technical Testimony* containing the following information on or before February 1, 1999:
 - 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 which 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 which 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 public

comment, but shall not preclude a person from presenting non-technical oral public comment.

4. The requirements for presenting oral public comment shall not apply to the Department. The Department will not present written public comment on the revised draft Permit, but reserves the right to file a *Notice of Intent to Present Technical Testimony* to respond to public comment at the public hearing.

C. *PARTY STATUS*

1. Any person, including the applicants, who wishes to be a party for purposes of public participation at the Santa Fe portion of the hearing shall file either a timely *Notice of Intent to Present Technical Testimony* or a timely *Entry of Appearance* on or before February 1, 1999. The *Entry of Appearance* shall include the following:
 - A. The person or entity filing the entry and current address for written notification;
 - B. States whether the person or entity supports or opposes the revised draft Permit; and
 - C. Provides 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 Santa Fe 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

The Department 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 revised 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 revised 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 applicants by certified mail; all persons presenting written public 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.

**LOCATIONS TO REVIEW THE DRAFT PERMIT,
FACT SHEET AND APPLICATION**

The revised draft Permit and permit application may be reviewed at the following locations:

SANTA FE

New Mexico Environment Department
Hazardous and Radioactive Materials Bureau
2044-A Galisteo Street
P.O. Box 26110
Santa Fe, New Mexico 87502-6110
(505) 827-1560 x1013
Attn: Mr. Steve Zappe

New Mexico Environment Department
NMED Library
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502-6110
(505) 827-2633
Attn: Ann Baumgarn

Santa Fe Community College Library
6401 Richards Avenue
P.O. Box 4187
Santa Fe, New Mexico 87502
(505) 438-1352
Attn: Ms. Monica Villaire-Garcia

New Mexico State Library
1209 Camino Carlos Rey
Santa Fe, New Mexico 87505
(505) 476-9790
Attn: Ms. Norma McCallum

CARLSBAD

Carlsbad Public Library
101 S. Halaguero St.
Carlsbad, New Mexico 88220
(505) 885-6776
Attn: Ms. Lori Mitchell

HOBBS

Pannell Library, Gov't Documents
New Mexico Junior College
5317 Lovington Highway
Hobbs, New Mexico 88240
Attn: Mr. Earl Dye

ALBUQUERQUE

New Mexico Environment Department
District I Office
4131 Montgomery Blvd., NE
Albuquerque, New Mexico 87109
(505)841-9450
Attn: Mr. Bill Bartels

Zimmerman Library
Government Publications Dept.
University of New Mexico
Albuquerque, New Mexico
(505) 277-8960
Attn: Mr. Robert Wiberg

LAS CRUCES

New Mexico Environment Department
District III Office
P.O. Box 965
1001 North Solano Drive
Las Cruces, New Mexico 88001
(505) 524-6300
Attn: Mr. Ken Smith

ROSWELL

New Mexico Environment Department
District IV Office
1914 West Second
Roswell, New Mexico 88201
(505) 624-6046
Attn: Mr. Gary McCaslin

**LOCATIONS TO RECEIVE FURTHER INFORMATION, TO FILE PUBLIC COMMENT AND
OTHER DOCUMENTS REQUIRED HEREIN**

- A. *Location of Further Information Regarding the draft Permit and Copies:*

Any person who seeks additional information or would like to arrange for copies of the revised draft Permit, at 35 cents a page, may contact Mr. Steve Zappe at the Hazardous and Radioactive Materials Bureau, 2044-A Galisteo Street, P.O. Box 26110, Santa Fe, New Mexico 87502-6110 ((505) 827-1560 x1013).

- B. *Location to File Public Comment, Requests For Hearing Clerk or Hearing Officer and Other Documents:*

Written Public Comment, *Entries of Appearance* and *Notices of Intent to Present Technical Testimony* and any other requests for the Hearing Clerk or Hearing Officer shall be filed at the following address:

Hearing Clerk
WIPP DRAFT PERMIT
New Mexico Environment Department
Room N-4071
P.O. Box 26110
1190 St. Francis Drive
Santa Fe, New Mexico 87502-6110

C. *Location for Persons With Disability:*

Any person with a disability requiring assistance or auxiliary aid to participate in this process should contact Cliff Hawley by January 22, 1999, at the following address:

New Mexico Environment Department
Room N-4071
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 TDD users may access Mr. Hawley's number at (505) 275-7333 or 800-659-1779.

A copy of the revised draft Permit, fact sheet and this public notice may be reviewed at the Department's web page at
<<http://www.nmenv.state.nm.us/wipp/>>