



State of New Mexico
ENVIRONMENT DEPARTMENT



Hazardous Waste Bureau

SUSANA MARTINEZ
Governor

2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6313
Phone (505) 476-6000 Fax (505) 476-6030

BUTCH TONGATE
Cabinet Secretary

JOHN A. SANCHEZ
Lieutenant Governor

www.env.nm.gov

J.C. BORREGO
Deputy Secretary

FACT SHEET

August 6, 2018

**NOTICE OF INTENT TO APPROVE A CLASS 3 MODIFICATION
TO CLARIFY TRU MIXED WASTE DISPOSAL VOLUME REPORTING AT THE
WASTE ISOLATION PILOT PLANT (WIPP)
CARLSBAD, NEW MEXICO**

Facility Name: Waste Isolation Pilot Plant

EPA Identification Number: NM4890139088-TSDF

GENERAL BACKGROUND

The New Mexico Environment Department (“**NMED**”) intends to issue a modification to the Hazardous Waste Facility Permit (“**Permit**”) for the Waste Isolation Pilot Plant (“**WIPP**”, or “**the WIPP facility**”) in relation to the calculation of transuranic (“**TRU**”) mixed waste volumes, in accordance with the New Mexico Hazardous Waste Act (“**HWA**”) and its implementing regulations. NMED 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. Prior to issuing a permit, NMED is required by regulation to release a draft of the revisions to the permit for public comment. NMED is also required to issue a fact sheet which serves two functions: 1) to facilitate public review of that draft permit; and 2) to provide a brief summary of the basis for draft permit conditions.

WIPP is a facility authorized by Congress for the disposal of TRU radioactive waste materials generated by atomic energy defense activities of the United States. The Department of Energy (“**DOE**”) owns the WIPP facility and DOE and Nuclear Waste Partnership LLC (“**NWP**”) co-operate the WIPP facility. These entities are collectively referred to as “**the Permittees**” in the draft Permit and this fact sheet.

The Permittees received a Permit from NMED in 1999 to dispose of TRU mixed waste containers 2,150 feet below ground in a mined geologic repository within the Salado Formation. This Permit was renewed in 2010. The WIPP facility is permitted to accept hazardous waste that is managed by DOE as contact-handled (“**CH**”) TRU mixed waste (transuranic mixed waste with a surface dose rate not greater than 200 millirem per hour). The WIPP facility is also permitted to accept hazardous waste that is managed by DOE as remote-handled (“**RH**”) TRU mixed waste (transuranic mixed waste with a surface dose rate of 200 millirem or greater). The containers of waste must undergo complete waste characterization by the generator/storage sites in compliance with requirements of the Permit prior to disposal.

This fact sheet describes the general background for the draft Permit, including; a physical description of the WIPP facility, its hazardous waste activities, a summary of the basis for the draft Permit, how the public may be involved in the permitting process, and the technical and regulatory basis for permit requirements and conditions.

DESCRIPTION OF THE WIPP FACILITY

The WIPP facility is located 26 miles southeast of Carlsbad, New Mexico in a remote desert area where there exists a 2,000-foot-thick salt bed. Openings have been mined 2,150 feet underground near the middle of the salt formation. WIPP is a geologic repository mined within a bedded salt formation, which is defined in 20.4.1.101 New Mexico Administrative Code (“**NMAC**”) (incorporating 40 CFR §260.10) as a miscellaneous unit. As such, Hazardous Waste Disposal Units (“**HWDUs**”) within the repository are eligible for permitting according to

20.4.1.900 NMAC (incorporating 40 CFR §270), and are regulated under 20.4.1.500 NMAC (incorporating 40 CFR §264, Subpart X, Miscellaneous Units).

TYPE AND QUANTITY OF WASTES WHICH ARE STORED AND DISPOSED

Disposal at WIPP is limited to defense-generated TRU and TRU mixed wastes. Mixed TRU waste has a hazardous component and radioactive component of elements with atomic numbers greater than uranium (element 92). Generally, TRU mixed waste consists of clothing, tools, rags, residues, debris, soil and other items contaminated with radioactive elements, mostly plutonium, and hazardous components consisting of RCRA-listed heavy and toxic metals, RCRA-listed organic residues (non-liquid), and RCRA-listed inorganic and organometallic compounds.

EPA hazardous waste numbers with the prefixes, "U", "F", "P", and "D", identified at 20.4.1.200 NMAC (incorporating 40 CFR Part 261, Subparts C and D), apply to TRU mixed waste streams managed at the WIPP Facility. Specifically: (1) D codes denote the characteristics of ignitability (D001), corrosivity (D002), reactivity (D003), and toxicity (D004- D043); (2) F codes signify wastes from non-specific sources; and (3) P and U codes denote discarded commercial chemical products, off-specification species, container residues, and spill residues thereof, with the P codes signifying acutely hazardous wastes and the U codes signifying toxic wastes. Wastes with the characteristics of ignitability, corrosivity or reactivity (D001, D002, and D003) are explicitly prohibited from management, storage, or disposal at the WIPP facility. The existing Permit identifies the EPA hazardous waste numbers that are acceptable at the WIPP facility.

PERMIT MODIFICATION SUMMARY AND BASIS FOR THE DRAFT PERMIT

NMED's issuance of a draft Permit is in response to the Permittees' Permit Modification Request dated January 31, 2018. The foundation for the draft Permit is the current Permit as of June 2018.

The Permittees submitted a Class 2 permit modification request on January 31, 2018 entitled "*Clarification of TRU Mixed Waste Disposal Volume Reporting.*" The Permittees published a public notice on February 2, 2018 that commenced a 60-day public comment period, which ended on April 3, 2018. Public meetings were held in Carlsbad and Santa Fe on March 6 and 8, 2018. On June 1, 2018, NMED determined that it was appropriate to process the Class 2 modification as a Class 3 modification due to significant public concern and the complex nature of the proposed change. NMED continued its review of the modification under Class 3 procedures. On June 22, 2018, NMED issued an Administrative Completeness Determination. On June 27, 2018, NMED issued a Technical Incompleteness Determination ("TID"), requesting clarification and additional information. The Permittees provided a response on July 12, 2018. NMED has reviewed this response and is now issuing this draft Permit. The draft Permit is based on the modification request submitted on January 31, 2018, input from the public as provided during the comment period, and the additional information requested and received by NMED.

This modification proposes to distinguish how the Permittees calculate final TRU mixed waste volumes for the purposes of reporting and for comparing such volumes to the maximum hazardous waste disposal unit capacities prescribed by Permit Part 4, Table 4.1.1, *Underground HWDUs*, so that capacities in the Permit, which are limited by the physical volume of each mined HWDU, are not exceeded. This Modification also proposes to distinguish between TRU mixed waste RCRA volume and Land Withdrawal Act ("LWA") TRU waste volume. The TRU mixed waste RCRA volume is tracked and reported to NMED by the Permittees in Table 4.1.1 in accordance with Permit Part 6, Section 6.10.1., *Panel Closure*, pursuant to the Resource Conservation and Recovery Act ("RCRA"). The LWA TRU waste volume will be tracked and reported by the DOE so that the total capacity limit for TRU waste is not exceeded pursuant to the WIPP Land Withdrawal Act.

Proposed changes are indicated in the draft Permit as redline/strikeout. Permit Parts 1, 3, 4, 6, and Permit Attachments A1, A2, B, C, G, H, H1, and J are the subject of the modification and are the only portions considered to be opened in this proceeding per 20.4.1.900 NMAC (incorporating 40 CFR §270.41). The draft Permit can be found on NMED's website located at the following link: <https://www.env.nm.gov/hazardous-waste/wipp/>.

NMED PROPOSED ACTION IN DRAFT PERMIT

NMED is issuing a draft Permit for public comment that considers the Permit modification submitted by the Permittees, input from the public as provided during the comment period and the additional information requested by NMED. NMED is proposing to approve the revised Permit modification ensuring compliance with the New Mexico Hazardous Waste Act, NMSA 1978, §§ 74-4-1 to -14 and the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC.

PUBLIC REVIEW OF THE DRAFT PERMIT

The Administrative Record for this proposed action consists of the Permit Modification Request, the draft Permit, the Public Notice, this Fact Sheet, and supporting documentation. The Administrative Record may be reviewed, with prior appointment, at the following locations during the public comment period:

NMED - Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
Phone: (505) 476-6000
Monday – Friday: 8:00 a.m. to 5:00 p.m.
Contact: Pam Allen

NMED- DOE Oversight Bureau
406 N. Guadalupe, Suite C
Carlsbad, NM 88220
Phone: (575) 885-9023
Monday – Friday: 8:00 a.m. to 5:00 p.m.
Contact: Makayla Viehweg

A copy of the draft Permit, this Public Notice, the Fact Sheet, the modification request and an index of the Administrative Record is also available on NMED's website located at the following link: <https://www.env.nm.gov/hazardous-waste/wipp/>. To obtain a copy of the Administrative Record or a portion thereof, please contact Ms. Pam Allen at (505) 476-6000 or at address given above. NMED will provide copies, or portions thereof, of the Administrative Record, including the draft Permit, at a cost to the requestor.

PUBLIC COMMENT AND REQUEST FOR HEARING

NMED shall issue a public notice on **August 6, 2018** to announce the beginning of a 45-day comment period in accordance with 20.4.1.901 A(3) NMAC that will end at **5:00 p.m. MST, September 20, 2018**. Any person who wishes to comment on the draft Permit or request a public hearing should submit written or electronic mail (e-mail) comment(s) with the commenter's name and mailing address to the address below. Only comments and/or requests received before **5:00 p.m. MST on September 20, 2018** will be considered.

Ricardo Maestas, WIPP Project Manager
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

Phone: (505) 476-6000
Fax: (505) 476-6030
E-mail: ricardo.maestas@state.nm.us
Ref: WIPP Draft Permit

Written comments should 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. Requests for a 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 requestor represents; (3) a statement of any objections to the draft Permit, including specific references to any conditions being modified; and (4) a statement of the issues which the commenter proposes to raise for consideration at the hearing. Written comment and requests for public hearing must be filed with Mr. Ricardo Maestas on or before **5:00 p.m. MST, September 20, 2018**. NMED will provide a thirty (30) day notice of a public hearing, if scheduled.

PROCEDURES FOR REACHING FINAL DECISION

NMED must ensure that the final Permit is consistent with the New Mexico Hazardous Waste Management Regulations. All written comments submitted will be considered in formulating a final decision and may cause the draft Permit to be modified. NMED 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 decision and the reasons for the changes. All persons presenting written comments or who requested notification in writing will be notified of the decision by mail. These responses will also be posted on NMED's website.

After consideration of all written public comments received and all data, views, and arguments presented at the public hearing, if one is held, NMED will issue, or modify and issue, the Permit. The Applicants shall be provided by mail a copy of any relevant modified documents and a detailed written statement of reasons for the modifications.

The Secretary of the Environment Department will make the final decision publicly available and shall 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 (Chapter 74, Article 4 NMSA 1978).

ARRANGEMENTS FOR PERSONS WITH DISABILITIES

Any person having a disability and requiring assistance or auxiliary aid to participate in this process should contact Donna Wright no less than 10 days prior to the end of the public comment period at the following address: New Mexico Environment Department, P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502-6110, (505) 827-9769. TDD or TDY users please access Ms. Wright's number via the New Mexico Relay Network at 1 (800) 659-8331.

NON-DISCRIMINATION STATEMENT

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's nondiscrimination programs, policies or procedures, you may contact:

Kristine Pintado, Non-Discrimination Coordinator
New Mexico Environment Department
1190 St. Francis Dr., Suite N4050
P.O. Box 5469
Santa Fe, NM 87502
(505) 827-2855
NMED.NDC@state.nm.us

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.