



Allen, Pam, NMENV

From: Maestas, Ricardo, NMENV
Sent: Wednesday, October 05, 2016 1:27 PM
To: Allen, Pam, NMENV
Subject: FW: CCNS Comments-WIPP Two-Item Package

From: Joni Arends [mailto:jarends@nuclearactive.org]
Sent: Monday, August 08, 2016 3:40 PM
To: Maestas, Ricardo, NMENV
Subject: CCNS Comments-WIPP Two-Item Package

August 8, 2016

By email: ricardo.maestas@state.nm.us

Ricardo Maestas
New Mexico Environment Department (NMED)
2905 Rodeo Park Drive, Building 1
Santa Fe, NM 87505

RE: WIPP Class 2 Permit Modification Request Two-Item Package

Dear Ricardo,

Concerned Citizens for Nuclear Safety (CCNS) provides the following comments on the Class 2 permit modification request package that was submitted by the permittees on June 3, 2016, according to their public notice.

CCNS appreciates that the permittees provided a draft of the proposed request and that representatives of the permittees as well as NMED and citizen group representatives met on March 7, 2016. CCNS continues to believe that such pre-submittal meetings are useful and supports continuing that "standard" practice in the future.

Nevertheless, CCNS remains concerned that neither DOE nor NMED have held any pre-submittal type meetings during the past two years to discuss what permit modifications are necessary to protect human health and the environment in order for WIPP to re-open. As a result, the WIPP permit is not adequate to protect human health and the environment, as required by the New Mexico Hazardous Waste Act (HWA) and the Resource Conservation and Recovery Act (RCRA). WIPP cannot be allowed to re-open until substantial revisions are made in the Permit, which can best be done through informal meetings and then class 3 permit modification procedures.

The WIPP underground is a significantly contaminated facility, including the Panel 7 hazardous waste disposal unit that cannot meet the "start clean, stay clean" DOE operating philosophy and the



WIPP Permit requirements. In addition, the permittees admit that there are 683 containers in the WIPP underground with Hazardous Waste Numbers D001 and D002 that are not allowed by the permit. Permittees' July 29, 2016 Written Notice to John Kieling and Kathryn Roberts - http://www.wipp.energy.gov/library/Information_Repository_A/Responses_to_Administrative_Order/Attachment_Final_Report_Regarding_Application_of_D001_and_D002_HWN_with_Attachments.pdf

The Notice also states that there were 148 Uniform Waste Manifests that were inaccurate and had to be corrected.

Nuclear Waste Partnership (NWP)'s inadequate performance

NWP became the Management and Operating Contractor and a permittee on October 1, 2012. In the more than 46 months since then, the facility has operated for about 16 months. Because of the inadequate performance of NWP, the facility has not been receiving or disposing of waste for the past 30 months and will not do so for some months into the future. Based on that record, the ability of NWP to safely operate the facility is in serious doubt. For the large majority of its time as operating contractor, and perhaps for the entire timeframe, NWP has been in violation of multiple permit provisions. Thus, the capability of NWP to comply with permit requirements is seriously in question since it has not demonstrated that it can do so. NMED must consider the permittees' compliance history, including violations of the Hazardous Waste Act or any permit condition, and may deny any permit modification based on that history. 74-4-4.2.D(6) NMSA. Given NWP's inadequate safety performance and lack of compliance with permit provisions, NMED must assure that the permit is more stringent rather than reducing the stringency of the permit, which, in essence, rewards the permittees for violations. Given that adequate ventilation is necessary for any underground mine, especially in the significantly contaminated WIPP underground, reducing ventilation requirements in active rooms would result in less protection of public health and the environment. Thus, that request in Item 2 "Ventilation" must be denied.

CCNS requests that the recently issued Government Accountability Office (GAO) report entitled, "NUCLEAR WASTE: Waste Isolation Pilot Plant Recovery Demonstrates Cost and Schedule Requirements Needed for DOE Cleanup Operations," GAO-16-608, August 2016, be added to the administrative record for this permit request. <http://www.gao.gov/products/GAO-16-608>

CCNS submits the following from the *GAO Highlights* as another example of NWP's incompetence to meet the basic requirements of the HWA permit for WIPP. Further, NWP did not meet the basic requirements for best practices. As a result, the permittees are asking for reduced ventilation rates in the contaminated underground, which must be denied.

"The Department of Energy (DOE) did not meet its initial cost and schedule estimates for restarting nuclear waste disposal operations at the Waste Isolation Pilot Plant (WIPP), resulting in a cost increase of about \$64 million and a delay of nearly 9 months. DOE incurred this cost increase and delay partly because it did not follow all best practices in developing the cost and schedule estimates. In particular, DOE's schedule did not include extra time, or contingency, to account for known project risks. Instead, DOE estimated it would restart waste operations in March 2016 based on a schedule with no contingency that gave DOE less than a 1 percent chance of meeting its restart date. In January 2016, DOE approved new estimates that added 8.5 months to the schedule, extending the restart to December 2016; increased the estimated cost of recovery by \$2 million; and resulted in an additional \$61.6 million

in costs for operating WIPP in fiscal year 2016. **DOE's WIPP operations activity manager said the revised schedule included contingency. However, according to DOE officials, they did not follow other best practices.** For example, DOE did not provide evidence of having an independent cost estimate to validate the revised estimate. DOE did not follow all best practices for cost and schedule estimates in part because DOE does not require that its cleanup operations, such as WIPP, follow these practices. Therefore, DOE cannot have confidence that its estimates are reliable. **In contrast, DOE established new requirements in June 2015 that its capital asset projects, such as the new ventilation system at WIPP, follow these best practices.** By also requiring cleanup operations to follow them, DOE would have more confidence in the estimates for cleanup operations and capital asset projects.

“DOE did not follow all best practices in analyzing and selecting an alternative for the new ventilation system at WIPP. As a result, DOE's analysis was not reliable and DOE cannot be confident that the alternative it selected in December 2015 will best provide the needed capabilities at WIPP. The analysis of alternatives (AOA) process entails identifying, analyzing, and selecting a preferred alternative to best meet the mission need. Of the four categories of best practices for AOAs, DOE's process fully met the category for identifying alternatives. For example, DOE identified a broad range of ventilation alternatives. **However, DOE only partially or minimally met the other three categories: general principles, analyzing alternatives, and selecting the preferred alternative. DOE did not follow the best practice to select the preferred alternative based on a cost-benefit analysis that assesses the difference between the life-cycle costs and benefits of each alternative.** In addition, an independent review that DOE commissioned consistent with best practices found that DOE's AOA did not adequately document a cost-benefit analysis and that, as a result, the selection of the preferred alternative was not supported by compelling information. The independent review recommended that DOE conduct a cost-benefit analysis consistent with best practices. However, DOE did not conduct the recommended analysis and document it before selecting the final alternative because there was no requirement to do so. In June 2015, the Secretary of Energy directed DOE to develop guidance for conducting AOAs consistent with AOA best practices. A DOE official said the department expected to issue the new guidance by December 2016.” [Emphasis added.] <http://www.gao.gov/assets/680/678859.pdf>

Those facts demonstrate the Permittees' extremely poor compliance history and their gravely inadequate safety performance. Those facts and the many proposed changes in the facility and waste analysis procedures must be described in the Permit, which must be modified to describe how those and other changes will assure that WIPP operates in a manner that is protective of public health and the environment. CCNS, therefore, fully incorporates the August 8, 2016 comments of the Southwest Research and Information Center about the permittees' Two-Item Package into these comments.

Thank you very much for your careful consideration of, and your response to, these and all other comments.

Sincerely,

Joni Arends, Executive Director

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