

**From:** nohardrock@cavemen.net (Rockefeller, Tod)  
**Subject:** EPA WIPP Public Hearings Deposition  
**To:** <steve\_zappe@edser.nmenv.state.nm.us>

Tue 10:48

Steve,

Attached is my deposition of subject. If you wish to discuss any matter concerned, by all means give me a call at 887-7461.

Sincerely yours,

Tod Rockefeller



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980703



June 3, 1998

**To: Benito Garcia, Chief  
Hazardous/Radiological Mat'ls Bureau  
New Mexico Environment Department  
P.O. Box 26110  
Santa Fe, New Mexico 87502  
(505) 827-1561**

**From: Tod Rockefeller  
former Environmental Scientist,  
WIPP Site Team,  
Carlsbad Area Office,  
U.S. Dept. of Energy**

**319 Sunnyview St.  
Carlsbad, NM 88220  
(505) 887-7461  
nohardrock@cavemen.net**

**Subject: DOE Violation of the Clean Air Act at the WIPP Site**

**Contained within my attached January 5, 1998 EPA WIPP Public Hearings Deposition is an explanation and documented evidence of the violation of subject. On June 1, 1998, I learned from the U.S. Dept. of Labor investigator assigned to my complaint against the DOE for my removal from federal service, that the EPA has essentially taken no action concerning my notification to them of the DOE's violations of law described within my deposition. I was told that they examined my deposition for "information" only.**

**The New Mexico State Attorney General's Office has filed an appeal last week that shipments of waste to the WIPP Site in the latter part of this month would be illegal without a RCRA permit being issued by your office. The DOE is most certainly guilty of violating the laws of this nation, but concerning the shipment of non-RCRA waste to the WIPP Site prior to receiving a RCRA permit, in my opinion, is not a violation of law.**

**As described to me; the mission of the NM State Attorney General's Office is to insure that there are no violations of law concerned with operation of the WIPP Project and to protect the safety of New Mexico residents. I am sure that the mission of your office is the same. The documented violation of the Clean Air Act (faulty air monitoring) and the criminal cover-up of material facts from the EPA are issues that are related to the RCRA permit to be issued by your office to the DOE for the WIPP Project.**

**Because there are serious liabilities and risks to New Mexico residents and the environment concerning the WIPP Project, we can not have this project operate in other than a very open and honest fashion. The residents of New Mexico are depending upon your office and that of the NM State Attorney General's Office to ensure this. The EPA apparently considers anything, including violations of law, conducted by the DOE concerning the WIPP to be acceptable. I hope that your office does not accept or tolerate DOE violations of law. In addition . . . that action will be taken to investigate and act upon what I have provided to you concerning a CAA violation that is related to radiological or non-RCRA shipments of waste to the WIPP.**

**The DOE has been criticized for being less than forthright with various aspects concerning the WIPP Site and project. My EPA Deposition attached provides documented evidence of this. Another area of concern is that above and below the WIPP repository's geological location there are bodies of water. There have been several historical anomalous modulations of ground water levels measured about the WIPP Site that have not been fully explained. The NMED and the public must be provided with all relevant information and problem areas without hesitation or delay. The WIPP Project's workforce must be permitted to accomplish this.**

**There are other dishonest managers within the WIPP Project, besides George Dials, whom are guilty of additional violations of our nation's laws which is fully documented. The root of the problems at the WIPP lies within its management, not within the excellent work force at this project which I have seen evidence of. Eg: the very high performance of the WIPP Mine Rescue Team. The faulty WIPP management must be expunged to ensure that workers are free to correct problems and address safety issues without harassment and reprisals such as what I was subjected to.**

**For this reason it is essential that the WIPP's RCRA permit not allow unnecessary risks to exist. The DOE must be cured of its tendency of being less than open and honest. Legal measures must be taken to force the DOE to correct the violations of safety regulations and law by addressing the root cause of these liabilities prior to the operation of the WIPP facility. Do the residents of New Mexico deserve anything less ?**

**Sincerely yours,**

**Tod Rockefeller**

**attachments**

**xc:**

**Lyndsay Lovejoy, NM State Attorney's Office  
Robert Neil, NM Environmental Evaluation Group  
Don Hancock, Southwest Research & Info Center  
Caron Balkany, Concerned Citizens for Nuclear Safety  
Janet Greenwald, Citizens for Alter. to Radioactive Dumping  
Mike Taugher, Albuquerque Journal  
Edward Slavin, Jr., Attorney**

## **EPA WIPP Public Hearing Deposition of Tod Rockefeller - 1/5/98**

- \*Former Environmental Scientist for the Carlsbad Area Office (CAO)**
- \*Transferred to the WIPP Project in 4/93**
- \*Removed from Federal Service on 12/10/97**
- \*Last Area Assigned - Environmental Monitoring**

**I, TOD N. ROCKEFELLER, do solemnly swear and affirm that:**

**I have been removed from federal service by the CAO for allegedly being a poor performer. Within this deposition of mine, all that I wish to detail about my removal is that these attached findings and work of mine played a very large role. I am afraid the courts will have to decide upon the CAO's grounds for my alleged poor performance. After you examine the attachments to my deposition, you have to be your own judge. Poor Performer?**

**Attachment A is the first of four Issues that were part of my 6/6/97 whistleblower report to the Office of Special Counsel (OSC). This review of mine was of the draft Comment Resolutions for the Safety Analysis Report for Packaging (SARP) of the shipping cask which will be transporting high level radioactive waste to the WIPP Site over our nation's highways.**

**I was temporarily assigned to work on the approval of this SARP by the NRC from 6/95 to 11/95. In 4/96 I was assigned to the CAO's Assurance Team (QA), but still received a copy of the WIPP contractor's draft Comment Resolutions to the SARP. You know the government . . . it takes a little time to catch up with mailing distributions. Anyway, as soon as I looked at these draft Comment Resolutions major problems immediately became apparent to me. Because of this I began my review, even though it was an area that I was no longer assigned to. Soon after I called the WIPP contractor to obtain NRC Regulatory Guides, necessary for my review, I received four new atypical work assignments from my Team Leader. Along with the new work assignments came the comment that I would have to "put the SARP review on hold." Besides my difficulty in obtaining the necessary NRC Regulatory Guides and the new work assignments and comment, the fact that the NRC Guides not being readily available is an indicator. No satisfactory review of the SARP could be done without the NRC Guides. To obtain these Guides, I had to threaten to get them from the NRC myself. What does this fact communicate?**

**Since my work load drastically changed such, I had to put in a bit of work on the four new assignments on my own personal time. I wanted to get back to my SARP review because I felt that it was important to the project and I had such a strong desire to contribute. I approached the CAO's Remote Handled Waste Manager within the National TRU Waste Program Office seeking help with review of the SARP. This manager told me that he was not reviewing the SARP because he did "not have time" to review it. The NRC approval of this SARP is a WIPP Project Disposal Decision Plan (DDP) Milestone. What was of such importance that this manager of Remote Handled Waste could not put any effort towards a WIPP Project DDP Milestone concerning Remote Handled Waste ?**

## T. ROCKEFELLER EPA PUBLIC HEARINGS DEPOSITION

Next, I approached the CAO's Transportation Manager, again seeking help with the SARP review, but when I inquired about him reviewing the SARP he just replied that he was not reviewing it either. Is all of this starting to paint a very distinct picture ?

My review was not easy to complete on my own, especially considering my other work and the intense scrutiny that it would certainly be subjected to, but I worked hard and completed it nonetheless. I outlined fourteen comments as not being resolved, but number 2.3 is most significant. Comment 2.3's significance lies in its history. The last page of my review itself is an attachment outlining my attempt to resolve this comment five months earlier in November of 1995. The fact of the matter is that my review pointed out the CAO manager, George Dials' violation of DOE Order 5480.3 par 6.2.(c). This safety regulation requires "Heads of Field Organizations" to "Perform an independent objective review and evaluation of contractors' safety analysis reports for packaging designs."

If you take the picture that I painted above with other CAO coworkers, the difficulty obtaining the NRC Regulatory Guides, and the comment that "you will have to put the SARP review on hold"; alone these facts raise very serious questions about what was going on. But to go further, the same comment concerning assurance of the quality of the material to be used for the bolting of this cask not being resolved despite my documented efforts makes the picture very complete. My efforts did not end back in 1995 with just issuing my recommendation, there were numerous inquiries all of which were obviously unsuccessful.

All of this solidly demonstrates that Mr. Dials certainly had a hidden agenda with the approval of this SARP. Perhaps it was scheduled to be approved in 1999 or 2000 ? My interference with his agenda caused me to receive the CAO reprisal of a failing annual performance appraisal that rating period. Examine my SARP review and keep in mind what it took to complete. Failing Performance ? How can this kind of activity be tolerated in the United States ? I always used to think that one would find actions like this going on in other countries . . . not America.

The problem with these kind of hidden agendas, besides the substantial abuse of the American taxpayers, is that the concern of greed and personal gain can blind one to the necessary consideration of safety issues. As a former metallurgist, I wonder how the comment concerning the assurance of the quality of the materials used for the RH-72B's bolts was resolved ? What about the bolts securing the TRUPAC-II casks together that will be used to transport radioactive waste over our nation's highways shortly ?

Attachment B of my deposition concerns two very important issues. I was not able to bring these issues up within the CAO because Dials was already working on my removal. Out of fear and concern I did nothing. I had hoped to be able to obtain some security and protection from the Equal Employment Complaints of CAO discrimination and reprisals against me. If I could obtain fair treatment from EEO law, I thought that I might be able to help resolve these two issues. This hope was dashed when I received the EEO Counselor's report from my first EEO Complaint and the CAO's reprisals just intensified.

## T. ROCKEFELLER EPA PUBLIC HEARINGS DEPOSITION

Since I have been removed from federal service, there is no longer any chance of my working out the two problem issues of Attachment B (Issue II of my OSC report). The first issue that I was trying to resolve was a long standing difficulty that the WIPP contractor has with producing and reviewing plans and reports. The first documented example of my efforts to correct this, which is within Attachment B, is dated 22 APR 94.

There were some major problems with the draft WIPP Environmental Protection Implementation Plan (EPIP) that I thought were important to correct (as outlined within my draft CAO Corrective Action Report, 97-001). This was especially true because of how serious and long standing the problem was. I attempted to issue CAO CAR 97-001 to correct the problems with the EPIP following the CAO procedures to do this. But, as I soon found out, procedures are not always meant to be followed at the CAO, with safety regulations on occasion meeting the same fate. After several rounds of trying to get this CAR issued, I found out about a CAO/EPA agreement for the EPA to have access to all of the CAO's CARs. After I gained this knowledge, I understood why there was so much CAO resistance to the issue of my CAR. On December 19, 1996 I canceled this CAR. This was after two months of trying to issue it. I did not have any choice because I knew that Dials was already working on my removal.

As I mentioned earlier, due to greed and dishonesty, problems or safety issues can fail to be resolved. This has been the case with the WIPP contractor's problem with procedures, plans, and reports that I was trying to resolve since 1994. You can see how successful that I have been . . . removed from federal service. Another problem is concerned with the WIPP Environmental Monitoring Plan (EMP).

I performed the primary review for the CAO of the EMP due to my assigned areas. There were no problems other than two editorial corrections that I noted in the draft EMP DOE/WIPP 96-2194. This did not last, however, when I was giving the final EMP a quick review shortly after I received it. It turns out that a 72 hour radon 'cool-down' that was in the draft EMP, for initiation of decay counting of air monitoring filters, had been removed from the final version without my knowledge from section 5.3.2.. I also reviewed all of the associated operational procedures to find an absence of a 'cool-down' specified also. Once I was aware of this, however, I was afraid to bring it up to the CAO managers. I did not know if there was some kind of hidden agenda again as with the RH-72B cask.

There are two radon isotopes, radon-220 and radon-222. The problem that radon causes with air monitoring of radionuclides suspended in the atmosphere is due not to radon itself, but to its decay daughters. Radon is a gas, but its decay daughters are electrically charged and adhere to air sampling filters. This condition requires a radon 'cool-down' of at least 48 hours prior to initiating a decay count of the filter to obtain accuracy. Radon-222 is not a problem due to the half-lives of its decay daughters totaling less than one hour. However, radon-220's decay daughter half-lives total close to eleven hours, therefore . . . the radon 'cool-down'.

## T. ROCKEFELLER EPA PUBLIC HEARINGS DEPOSITION

So within my deposition I have presented two very clear safety issues arising from the dishonesty of the CAO's management under the direction of George Dials. There have been escalations back and forth between myself and the CAO due to a difference in moral judgement and honesty. Mr. Dials is most certainly willing to sacrifice the safety of American citizens for his own personal gain. For example, the RH-72B shipping cask SARP evidently was not scheduled to have all of the Argonne National Laboratory - East's (contracted thru DOE-HQ) comments resolved for say, at least another year longer than they were. I obviously interfered with Mr. Dials' hidden deal. The problem with being concerned so much with personal gain is that it can cloud an adequate amount of attention from being focused upon safety concerns as I mentioned earlier.

I have only become aware of the problems with the shipping casks and the environmental air monitoring. With a man like Mr. George Dials 'behind the wheel' of the WIPP Project, what other safety concerns have been overlooked, hidden, or likely to come up in the future? We all must be very concerned of safety issues or concerns which may be sacrificed especially if there is some kind of big money deal involved.

I have included, within Attachment C, some examples of my prior work as an Atmospheric Research Scientist for DOE-ER's Environmental Measurements Laboratory (EML). Also, a Certificate of Appreciation from the Defense Logistics Agency (DLA). This certificate was for the results of my work during the first month that I was released from a rehabilitation hospital. My hospital stay was subsequent to an auto accident where I was in a coma for six days as a result of cranial nerve damage from a head injury in December of 1988. The head injury has disabled me from the nerve damage, but has not stopped me from successful accomplishments at work. In fact, the damage that I suffered has caused me to highly concentrate and intensify my efforts to produce significant results as I have for the Defense Department, EML, and the WIPP.

I am not a "Poor Performer" as Mr. Dials has tried to label me as, to cover up and escape violations of the law that he is responsible for. These violations include Office of Personnel Management law, the Rehabilitation Act (like the ADA), Equal Employment Opportunity law, Perjury, Forgery, and violation of DOE Safety Order 5480.3 par. 6.2.(c).

The information that I have given, of course, is not confidential and it may be shown to the interested parties. In accordance with 28 U.S.C., I declare under penalties of perjury that the above statements are true and correct to the best of my knowledge, information and belief.

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Tod N. Rockefeller

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Date

**EPA Deposition, Attach. B Index**  
**Waste Isolation Pilot Plant (WIPP) Project Problem Area**  
**The DOE's Carlsbad Area Office Criminal Misrepresentation to the EPA**  
**\*Clean Air Act - Faulty Radionuclide Air Monitoring (Attach. B-16)**

**Attachments**

- 1. My 4/22/94 review of the "Draft" WIPP Land Mgm't Implementation Plan. This is an early demonstration of the problem area and my attempt at correction.**
- 2. My letter dated 12/19/96 - Cancellation of CAO Corrective Action Report (CAR) 97-007 (formerly 97-001). This was "Issue III" of my 6/6/97 Whistleblower report.**
- 3. E-Mail concerning the EPA Audit of the CAO's QA Program dtd. 12/17/96.**
- 4. My handwritten revisions of the 12/11/96 version of CAR 97-007 to address the 7<sup>th</sup> Round or last CAO effort to prevent my issue of this CAR.**
- 5. 12/11/96 version of CAO CAR 97-007.**
- 6. My request to Ms. Lee Chism of the CAO Assurance Team (CAO-AT) for a new CAR number after Mr. Denny Brown (CAO-AT Team Leader) had reassigned 97-001.**
- 7. 12/10/96 version of 97-001 with the CAO's 6<sup>th</sup> Round of required changes.**
- 8. This version of 97-001 shortly prior to 12/10/96 was noted to require a change of the "Response Due Date" (the 96 should be 97). Between "7" & "8" Mr. Brown came up with additional required changes noted on this version (Round 5).**
- 9. 11/1/96 version of 97-001 with the CAO's 4<sup>th</sup> Round of required changes.**
- 10. 10/21/96 version of 97-001 with the CAO's 3<sup>rd</sup> Round of required changes.**
- 11. Corrected version of the cover letter to issue the CAO CAR 97-001 dtd. 10/21/96.**
- 12. Unmarked 10/21/96 version of CAR 97-001.**
- 13. The CAO's 2<sup>nd</sup> Round of required changes dated 10/21/96 for the draft CAR submitted prior to 10/17/96.**

14. **My response dated 10/18/96 to the CAO's 1<sup>st</sup> Round of required changes or "Draft CAR Review Comments".**
15. **The CAO's 1<sup>st</sup> Round of required changes dated 10/17/96.**
16. **WIPP Environmental Monitoring Plan (EMP) Draft and Final Version Excerpts. The final EMP had the air monitoring 'radon cool-down' omitted without my knowledge.**

*Tod Rockefeller  
former Environmental Scientist  
WIPP Site Team,  
Carlsbad Area Office,  
U.S. Dept. of Energy*