



SOUTHWEST RESEARCH AND INFORMATION CENTER

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April 15, 2019

James C. Kenney, Secretary
New Mexico Environment Department (NMED)
1190 St. Francis Dr.
Santa Fe, NM 87505

via email

RE: WIPP Permit Renewal Process and New Shaft permit modification

Dear Secretary Kenney:

On April 11, representatives of Southwest Research and Information Center (SRIC), Nuclear Watch New Mexico, Concerned Citizens for Nuclear Safety, and Citizens for Alternatives to Radioactive Dumping met with seven representatives of the WIPP permittees – Department of Energy (DOE) Carlsbad Field Office and Nuclear Waste Partnership. The permittees limited the scope of the meeting to the new shaft #5 and the permittees' answers of March 4, 2019 to NMED questions about the shaft determination request. At the meeting, we were informed that DOE WIPP Manager Todd Shrader intended to have a meeting with us "in a couple of months" to discuss the permit modification and permit renewal issues that we have long been requesting.

At the meeting, SRIC stated that it was very concerned about the lack of the permittees' willingness to discuss the permit renewal process and the apparent lack of action on a permit renewal application, since the public process should have already begun. While the permittees' representatives said that they would report our concerns, SRIC believes that the permittees' inaction may better be addressed by NMED action.

Given the statements at the April 11 meeting and previous permittees' actions, we have two suggestions, consistent with your authority, and the discussions held with you on April 2, 2019:

1. NMED inform the permittees that the priority is the permit renewal process and that the permittees should initiate the pre-renewal application public process immediately, given the time required for what could be a technically and legally complex renewal process so that a permit renewal decision can be issued by the end of 2020, when the existing permit expires.
2. NMED inform the permittees that no construction-related activities related to Shaft # 5 are allowed until a modification is approved and, further, that the modification request will not be processed prior to the permit renewal decision and that it might be deferred until after the Final Order on the renewal application is issued.

The permit renewal process may require more than 21 months, so it must begin immediately.

The regulations (20 NMAC 4.1.901.C(1) (incorporating 40 CFR 124.31(d)) require that prior to submitting a permit renewal application, the permittees must provide public notice at least 30 days prior to having one or more pre-application meetings. For the first WIPP Permit Renewal process, the permittees held pre-application meetings on February 10 and 12, 2009. The Secretary's Final Order renewing the permit was issued on November 30, 2010 – or more than 21 months later. Based on that history, the pre-application meetings for the renewal should have been held two months ago, yet they have not been announced and the permittees have not even provided a schedule for such public meetings, nor the expected contents of the renewal application.

Moreover, the forthcoming renewal process will likely be more technically and legally complex and be subject to much more public concern and opposition than the previous renewal, which could require a more lengthy timeframe. The previous renewal application included few major changes, whereas the forthcoming renewal has at least one issue – Overpack Container Storage Unit – that SRIC and some other parties consider to be illegal and technically complex. The Permittees may seek to change Permit Section 2.3.3.8 related to Excluded Waste, and they may propose other major changes, including Shaft #5 and authorizing disposal in additional panels.

Also, unlike the previous renewal process, there are existing provisions of the Permit that are being legally challenged – the Volume of Record modification approved on December 21, 2018 – and which SRIC intends to oppose in the renewal process, if it has not been addressed through the ongoing appeal in the New Mexico Court of Appeals (A-1-CA-37894) or by an agency-initiated modification under 20 NMAC 4.1.901 (incorporating 40 CFR 270.41). Thus, the already known substantive issues in the forthcoming renewal process make it likely that it will take a longer period of time than the previous renewal.

The Permittees are well aware of the regulatory requirements, the time to complete the previous renewal process, and the limited resources of NMED and stakeholders. Consequently, the Permittees apparently expect that there will be an administrative approval of an extension of the existing permit beyond its expiration date of December 30, 2020. SRIC urges you to inform the permittees that such an extension is not favored and that the permittees should immediately start the renewal process with the required public notice and pre-application meetings.

2. The permittees should be informed that construction of Shaft #5 is not allowed until a permit modification is approved and that such a decision is a lower priority than the renewal process.

The Permittees' March 4, 2019 response to Question #9 stated:

“The following time lines are estimated for the Utility Shaft Project:

- a. Initiate sinking of S#5 in March 2020
- b. Shaft sinking complete approximately 17 months after start date (August 2021)
- c. Drifts (mining from west to east) complete approximately 8-month duration (April 2022; the connection to the existing facility will be made at approximately this point in time)
- d. Startup/Testing/Project Closeout approximately one-year duration (March 2023)”

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At the April 11 meeting when asked which of those four activities could begin without an approved permit modification, the answer was “We don’t know.” Since the Shaft #5 request is not a class 1 modification that may be put into effect without agency action under 20 NMAC 4.1.901 (incorporating 40 CFR 270.42(a)(1)), the expected, correct answer is “None of them.”

Thus, SRIC believes that NMED should clearly inform that permittees that none of those actions, including beginning of shaft sinking, can occur prior to the issuance of a permit modification.

As already noted, SRIC further believes that the priority is the permit renewal process and the Shaft #5 should be considered either in the renewal process or after any Final Order on the renewal application is issued, which is SRIC’s preferred approach. NMED and stakeholder resources are limited and they should be used on the highest priority activities, of which the permit renewal process seems the most important.

SRIC continues to request a meeting as soon as possible with the permittees to further discuss the permit renewal process. CBFO Manager Todd Shrader is copied to ensure that he is aware of our concerns and our continued request for a meeting sooner than his proposed timeframe.

Of course, we also welcome further discussions with you and your staff.

Thank you very much for your careful consideration of these suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Hancock". The signature is written in a cursive, flowing style.

Don Hancock

cc: Jennifer Pruett, Stephanie Stringer, John Kieling, Ricardo Maestas, Todd Shrader