



February 15, 2017

Frank Marcinowski  
Associate Principal Deputy Assistant Secretary  
for Regulatory and Policy Affairs  
EM-4  
U.S. Department of Energy  
1000 Independence Ave., SW  
Washington, DC 20585

Dear Mr. Marcinowski:

Thank you for your February 6, 2017 response to our letter of November 21, 2016 regarding the Waste Isolation Pilot Plant (“WIPP”). The purpose of this letter is to briefly provide our initial response to your letter and the current WIPP situation, and to request an early meeting with you and other appropriate DOE officials to discuss a path forward that promotes safety and complies with regulatory and National Environmental Policy Act (“NEPA”) requirements.

Your February 6 response relies heavily on the December 2016 Supplement Analysis (“SA”), and we carefully reviewed the document. As you stated, the SA addresses some of the concerns in our letter, and we will acknowledge as much in the paragraphs that follow. However, we have several areas of concern that the SA fails to address.

As an initial matter, the SA and your letter do not address our concern regarding “the identification and analysis of alternatives to the proposed action” of re-opening the facility in contaminated Panel 7. Since the Data Call referenced in the SA (DOE, 2016b) estimates that because of the contamination, future shipments will not fill Panel 7 until 2022, there are clearly alternatives that could have WIPP operating in an uncontaminated environment much sooner than that date. We believe that such alternatives would be safer for workers and the public and fully comply with regulatory requirements, including the Solid Waste Disposal Act. A “hard look” analysis of such alternatives is necessary to comply with NEPA. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989). Further, such analysis would inform policymakers as to funding needs and options for future activities at WIPP and generator/storage sites.

Additionally, the SA and your letter do not address our understanding that “NEPA requires that the Department not predetermine the decision to re-open WIPP without first conducting required environmental analysis.” As with the WIPP Recovery Plan of September 30, 2014, the SA provides no mention or discussion of other alternatives than re-opening WIPP and emplacing waste in the contaminated Panel 7. Thus, there is the strong impression that DOE

predetermined the outcome of the SA, rather than conducting the required NEPA analysis. *Fund for Animals v. Norton*, 281 F. Supp. 2d 209, 229 (D.D.C. 2003).

The SA and your letter also do not address the reality described in our letter that “previous analysis materially underestimated the probability and the environmental consequences of such a fire and exothermic chemical reaction.” Section 3 of the SA discusses the February 5, 2014 fire and the February 14, 2014 radiation release and describes the impacts as being bounded by the WIPP SEIS-II (DOE/EIS-0026-S-2). However, the SA does not mention the fact that one underground worker had severe smoke inhalation that resulted in permanent disability and termination from the workforce and that the soot from the fire required major cleaning of the waste hoist that kept it out of services for months. Such an accident and its effects also were not included in the WIPP SEIS-II. Neither did the SEIS-II contain any analysis of the impacts at WIPP and the generator/storage sites of incidents that would force suspension of waste shipments and emplacement for the three year-timeframe that has occurred. Neither did the SEIS-II include any analysis of an additional five year or more reduction in waste shipments and emplacement rates as will occur and its impacts on WIPP and the generator/storage sites. The need for such analysis is a NEPA requirement and is very important to demonstrating regulatory compliance, including for the Solid Waste Disposal Act.

Section 2.2 of the SA briefly describes the changes in underground operations occurring now, including waste emplacement in contaminated Panel 7 that requires workers to have respiratory protection and protective clothing. However, the SEIS-II does not include any analysis of the impacts on workers or the public of either routine operations or accidents in such an environment. NEPA requires analysis of those changed circumstances. *People Against Nuclear Energy v. U.S. NRC*, 678 F.2d 222 (D.C. Cir. 1982), rev'd on other grounds, 460 U.S. 766 (1983).

NRDC and SRIC are extremely concerned about the worker health and environmental effects of ground control problems at WIPP. Those concerns are heightened by recent roof falls in several areas of the WIPP underground, including a major collapse in Panel 7, Room 4 on November 3, 2016 that caused evacuation of the workers in the underground. [http://www.wipp.energy.gov/Special/WIPP%20Update%2011\\_3\\_16.pdf](http://www.wipp.energy.gov/Special/WIPP%20Update%2011_3_16.pdf). That room had been intended for waste emplacement. The Mining Safety and Health Administration (MSHA) Technical Support Evaluation was issued on December 1, 2016. [http://www.wipp.energy.gov/Special/MSHA\\_Technical\\_Support\\_Evaluation.pdf](http://www.wipp.energy.gov/Special/MSHA_Technical_Support_Evaluation.pdf).

The report states that the convergence rates in that room of 25 inches to 36 inches per year “had never before been observed at WIPP, even in the experimental SPVD rooms.” (at 14). The report further states: “The sudden, unprecedented increase in the convergence rate was unexpected, but no room had ever been left unsupported for this long either.” (at 18). With WIPP’s re-opening, contaminated Panel 7 is intended to be used for waste emplacement for five years or longer, during which time ground control measures cannot be taken in rooms with waste. Thus, rooms with waste will be unsupported for even a longer period of time than what occurred in Panel 7, Room 4. The likelihood of a roof fall in an active panel with workers emplacing waste and the health and environmental effects were never analyzed in the SEIS-II,

nor in the SA. In 1991, the prospect of a roof fall at WIPP was sufficient to support a preliminary injunction. *New Mexico v. Watkins*, 783 F. Supp. 628, 633 (1991). In addition to being required by NEPA, policymakers and the public should fully understand the potential risks and effects of such accidents and the possible mitigation measures.

Finally, the SA and your letter do not address the reality stated in our letter that “[t]he presence of hydraulic fracturing or ‘fracking’ near the WIPP site is a new activity, the effects of which on current and long-term operations of the facility have not been analyzed in the WIPP EISs.” Again, NEPA requires consideration of such new information. *Marsh v. Oregon Natural Resources Council; Chemical Weapons Working Group v. U.S. DOD*, 655 F. Supp. 2d 18, 34-35 (D.D.C. 2009).

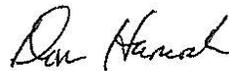
We look forward to your acceptance of having a meeting in the near future.

Thank you for your careful consideration of, and response to, these matters.

Sincerely,



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