



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 17 2014

OFFICE OF
AIR AND RADIATION

Mr. Jose Franco
Carlsbad Field Office
U.S. Department of Energy
P.O. Box 3090
Carlsbad, New Mexico 88221-3090

Dear Mr. Franco:

The U.S. Environmental Protection Agency is reviewing the Biennial Environmental Compliance Report (BECR) for the Waste Isolation Pilot Project (WIPP) that was submitted to the Agency on October 27, 2014, as required under section 9(a)(2) of the WIPP Land Withdrawal Act (PL 102-579, as amended by PL 104-201) (LWA). Within six months of receiving the BECR, the EPA Administrator is required to determine whether the WIPP "is in compliance with" all applicable environmental laws, regulations and permit requirements. *See* WIPP LWA section 9(a)(1), (3).

The Agency is not satisfied with the 2014 BECR's narrow approach to compliance self-reporting, specifically the treatment of the February 14, 2014 radiological incident at the WIPP. The EPA disagrees with the restriction of the BECR to information that was explicitly known by the U.S. Department of Energy (DOE) as of March 31, 2014. The 2014 BECR was submitted in late October, giving the DOE sufficient time to evaluate whether the WIPP was actually in compliance as of the March 2014 time period defined by the Department in the report. The EPA likewise disagrees with the report's assumption that the WIPP remains compliant in the absence of external findings to the contrary. This is particularly evident in Section 2.2 of the 2014 BECR, which bases Resource Conservation and Recovery Act (RCRA) compliance on the single Administrative Order issued by the New Mexico Environment Department (NMED) prior to March 31. The DOE is responsible – particularly in the aftermath of a serious incident – for a thorough self-evaluation of whether it was in compliance with the requirements of its own permit.

The EPA's statutory obligation to evaluate whether the WIPP "is in compliance" with environmental and public health and safety laws is not restricted to compliance during the DOE's reporting period. *See* WIPP LWA section 9(a)(1), (3). In addition, the Agency may make a determination of non-compliance "at any time during the disposal phase." *See* WIPP LWA section 9(c)(1).

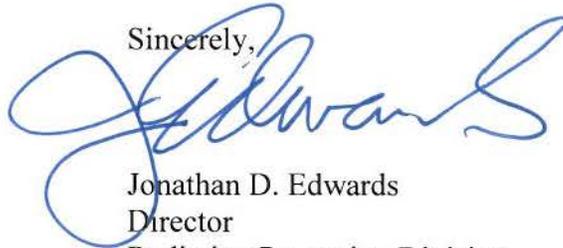
The EPA has serious concerns regarding the WIPP's current environmental compliance. For example, the executive summary of the DOE's April 2014 Phase 1 Accident Investigation Report identifies instances of noncompliance with multiple DOE Orders at the WIPP (ES-7). Available information regarding nitrate salt waste from Los Alamos National Laboratories suggests the processing and emplacement of the suspect waste streams led to environmental permit violations. *See e.g.* DOE Office of Inspector General report DOE/IG-09212 (September 2014). The Administrative Compliance Order

issued by the NMED on December 6, 2014 (HWB-14-21) states that the WIPP is not in compliance with multiple conditions of its hazardous waste facility permit.

In its September 2014 Recovery Plan, the Department identified open communication as part of its recovery strategy. The approach used in the 2014 BECR does not provide the EPA with sufficient information for the Agency to make a determination whether the WIPP is in compliance with the laws identified in section 9 of the WIPP LWA. The EPA requests that the DOE provide supplemental information that fully evaluates the WIPP's current compliance with all applicable environmental laws, regulations (including DOE Orders) and permit requirements. Please respond no later than January 30, 2015.

If you have any questions, please contact Jonathan Walsh at (202) 343-9238.

Sincerely,



Jonathan D. Edwards
Director
Radiation Protection Division

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EPA WIPP Team
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