

# Gridlock?

It should come as no surprise that the compliance order issued by the New Mexico Environment Department against the Waste Isolation Pilot Plant and Los Alamos National Laboratory is a source of contention. After all, the order, besides including the largest fine ever levied against the DOE, has direct ties to our nation's primordial political debate- the struggle between state's rights and federal jurisdiction. Beyond the tens of millions of dollars of proposed fines, the issue is of significant historical impact. Immediate claims that the DOE should just pay or just not pay the fine are unrealistic oversimplifications. A compromise that prioritizes the future of the program is essential.

The Carlsbad Mayor's Nuclear Task Force has proposed a resolution suggesting a potential path forward. As of publication date (March 11) this resolution has been approved by the City of Carlsbad and the Carlsbad Department of Development. A similar resolution has been introduced to Eddy County and to the Carlsbad Chamber of Commerce.

### WIPP RESOLUTION

WHEREAS, the citizens of Carlsbad, NM and Eddy County, NM are gravely concerned about the deadlocked negotiations between DOE and NMED regarding the compliance order imposed; and

WHEREAS, the Waste Isolation Pilot Plant, or WIPP, is a critical solution to the nation's nuclear waste problem, having already provided cleanup to thousands of barrels of transuranic (TRU) waste from the defense program generator sites across the country, but a significant amount of work remains; and

WHEREAS, a radiological release and unrelated fire in 2014 has stalled this important national cleanup effort, and an extensive recovery process is underway; and

WHEREAS, the New Mexico Environment Department has issued a compliance order resulting in fines to the Department of Energy for incidents, based on allegations closely matching the investigations by the Department of Energy's own Accident Investigation Board; and

FURTHERMORE, the Central Characterization Program at Los Alamos certified waste for transportation to WIPP that violated DOT standards which prohibits shipments of ignitable, corrosive or reactive substances; and

FURTHERMORE, Congress and DOE have significant culpability, due to inadequate funding and poorly-written contracts with contractors resulting in a lack of emphasis on safety, lack of emergency response training and an extraordinarily long list of deferred maintenance; and

WHEREAS, a prompt resolution to the dispute related to the compliance order is in the best interest of the safety of the citizens of New Mexico and nation. Waste accumulating at generator sites has a significant oversight cost, and that waste needs to be disposed at WIPP; and

WHEREAS, the DOE will require the NMED's assistance for a number of future permit modifications, some of which will be critical to



FEBRUARY 2014:  
Carlsbad Mayor Dale Janway speaks to a packed house at the first of many WIPP town halls to discuss the recovery process.

The apparent gridlock between the DOE and NMED over a compliance order currently threatens to stall the recovery effort.

the reopening of WIPP; and

WHEREAS, DOE receives appropriations and operating funds from Congress for only one fiscal year at a time, and those funds are expressly appropriated for specific line items for individual site operations; and

WHEREAS, DOE has withheld anticipated site budget expense of \$57 million from LANS and \$3 million from NWP for bonuses that were not paid; and

WHEREAS, communities and states hosting operating federal facilities or clean-up sites across the DOE complex are deeply concerned by the DOE position that the only way they can pay a fine is to extract it from the budget of the site which significantly harms the site's operation and mission – which takes money away from cleanup activities in the community most impacted by DOE's violation of the law; and

WHEREAS, DOE's position on paying fines essentially compromises and negates any authority a state has to regulate and oversee a DOE facility when that authority has clearly been given a state in federal law and by operating permit agreement, and

FURTHERMORE, fines are an enforcement necessity; however, money from fines should not be considered a revenue-enhancing vehicle for a state, and such money should not be diverted to the state's general fund but should be used directly to enhance and improve the status and safety of the WIPP project and community which embraced this project.

WHEREAS, DOE and NMED should immediately begin discussions at high level management positions in order to develop a framework for resolution rather than waiting for a lengthy legal battle – which has already been ongoing for over six months.

NOW, THEREFORE, the City of Carlsbad, NM, Eddy County, NM, Carlsbad Department of Development and the Carlsbad Chamber of Commerce recommend the following actions:

1. Both parties at the DOE Secretary level

and the Governor of New Mexico, in the best interest of their constituents, show a willingness to negotiate by confirming to one another that willingness, and subsequently appointing negotiators and setting a meeting date.

2. Each party should come to the negotiating table and also bring pre-agreed upon alternative positions and/or compromises from their hierarchy in response to prior positions iterated by both parties.

3. NMED and DOE should come forward with lists of potential supplemental environmental programs for uses of the fines that would advance the sites' program by off-setting future costs, yet not off-setting any regulatory or operational requirements presently required.

4. Payment of fines should not come from the sites' budgets, but from the reprogramming of DOE's funds, unused funds from the affected sites budget, newly appropriated funds, or other sources that do not affect the operating budget of the site or its mission.

5. An extended amortization of the fine should be taken under consideration to avoid a large DOE budget payout at one time.

6. Presently, the fines for WIPP and LANL are being considered as a package and the parties should be prepared to separate the negotiations for WIPP and LANL and to resolve them separately.

7. If no resolution through negotiations is forthcoming, the parties should immediately move into a formal mediation process.

AND FURTHERMORE, we the undersigned, on behalf of our citizens, implore the Secretary of Energy and the Governor of New Mexico, come to the table in good faith to resolve the issues of the Consent Order, fines, their amounts, source of payment, supplemental environment programs for use of the fine money in the best interest of the affected facilities, New Mexico communities and counties, the State of New Mexico, those affected in the DOE Complex and the United States.

# WIPP Path Forward: New Ventilation Shaft

As a result of the February 2014 radiological release, the WIPP underground ventilation system was placed into what is called “filtration mode,” meaning all air exiting the mine is exhausted through the HEPA filters in order to contain the very minor amount of contamination in the WIPP underground. Filtration mode limits the amount of operations that can take place in the WIPP underground at any given time due to the reduced air flow. During this upcoming year, WIPP will make interim and supplemental adjustments to its ventilation system to allow the facility to receive and emplace an estimated five to six shipments a week, as compared to a previous average of around 25.

This rate is not fast enough to adequately move forward with cleaning up the 66,000 cubic meters of transuranic (TRU) waste currently located at 13 sites around the country that is intended for WIPP. That’s not even counting the newly generated waste that is being created right now or potential waste streams of radioactive material that should go to WIPP.

The waste intended for WIPP is stacking up, and these sites are building additional warehouses for storage. Some of these sites also face fines for not moving waste. Most importantly, leaving this waste above ground means it is still at risk for wildfires and other natural hazards. Safely bringing this waste to WIPP is still the best solution. It’s always worth noting that the drum rupture that happened at WIPP could have been much worse if it had happened anywhere else.

To bring WIPP back to its full operational level of around 25 shipments a week, the facility will eventually have to make a decision. We hope that decision will be quickly made and made in

the direction of sinking a new ventilation shaft for the facility.

WIPP’s path forward currently calls for the construction of this shaft, but there has been an alternate proposal suggesting that the facility instead add several extra layers of filtration, which would be changed regularly. Additionally, a third unofficial alternative, voiced by some private citizens, is to acknowledge that the levels of contamination in the WIPP underground are so low that a new ventilation shaft or additional layers of filtration are not needed. WIPP can simply complete its decontamination efforts, no longer run in filtration mode, and resume full operations, according to this viewpoint.

While the levels of contamination in the WIPP underground are undeniably low, this third option is not politically or socially realistic. The Department of Energy has said it will continue to make decisions based on the As Low As Reasonably Achievable (ALARA) premise- and we agree. WIPP is going to need to either sink a new ventilation shaft or add an additional layer of filtration if it wants to move past five or six shipments a week. The ventilation shaft remains by far the best option.

## Cost

A new ventilation shaft is estimated at around \$140 million. This is comparable (but slightly higher) to the estimation of the plan calling for additional filters, but only if you assume a 2030 date of closure.

However, more recent estimates, based on TRU inventory, now suggest that WIPP has an additional 35 years of life – so up to around 2055. At that point the expense of having to continue to clean and change additional filtration and adding

ventilation shafts becomes more expensive than the one time cost of a new shaft. It’s an issue of a one-time cost that will save money in the long run.

## Inventory

There’s more TRU waste set to go to WIPP than there is space remaining in Panels 7-8 and the corridors that will eventually become Panels 9-10.

Current inventory estimates see a need for as many as seven more panels for contact-handled waste. There may be an even greater need for space for the remote-handled inventory. A new ventilation shaft won’t just address current recovery concerns, but it will allow for the creation of additional panels to the west of the current underground footprint to allow for the disposal of additional WIPP inventory.

That’s not even counting additional potential waste streams, such as Greater Than Class C waste and Hanford Tank Waste, which should go to WIPP due to their makeup. If you want to revisit the issue of cost, note that the cost of keeping TRU waste at Hanford is estimated to be \$130 million per year and the cost of keeping waste at other sites is also significant.

With a new shaft at the west end of the mine and the closure of south end, the west end could be completely run as a non-contaminated area and totally exhausted to the atmosphere, of course, with HEPA filters in place as a precaution.

WIPP is too important to cover it with Band-Aids. This community committed itself to a long-term relationship with DOE and to clean-up of the weapons complex, and a new ventilation shaft is the responsible path forward.

---

## Coverage of Community WIPP Attitudes Unfair

It’s a depressing picture – a community so interested in the jobs that a nuclear project brings that its residents turn a blind eye to major safety concerns.

That’s the troubling picture painted by *The Santa Fe New Mexican* in its recent coverage of WIPP’s one year anniversary of the radiological incident– “Repository’s Future Uncertain, But New Mexico Town Still Believes.”

It’s a good thing that is not the case. While Carlsbad residents are certainly more supportive of WIPP on average than Santa Fe residents, that is because of, not in spite of, a higher level of knowledge and safety concerns for friends and neighbors.

The opinion spectrum of Carlsbad residents certainly can’t be summarized in one or two sound bites, but the general consensus here seems to be a measured view that the February incidents revealed significant needs for improvement, but that the overall WIPP process works well.

*The New Mexican’s* recent role covering the Waste Isolation Pilot Plant has seemingly been to serve as the mouthpiece for the state’s anti-nuclear movement. The coverage seems to have a significant bias and agenda. WIPP is an easy target. Opponents of WIPP in the newspaper’s coverage are generally portrayed as the voice of reason, while comments suggesting that the recovery process is actually going pretty well are quickly qualified with an unattributed narrative by the author, effectively alleging they don’t know what they are talking about.

For example, in the Feb. 14 article, the author interviews a woman who says the leak was not as bad as reported. Following the quote, the author feels the need to dismiss the statement.

“The optimism in the face of a litany of critical state and federal findings underscores the town’s economic reliance on the federal facility...”

We were glad that the reporter finally came to Carlsbad to ask its residents what they think about WIPP. However, statements made by anti-WIPP spokesperson Don Hancock and others in opposition have NEVER been subjected to the narrator’s same level of scrutiny. In fact, Hancock is given the opportunity for rebuttal to almost every single comment made by proponents of WIPP. This is not neutral reporting.

And then there is this editorialized gem – “The citizens of Carlsbad and city leaders are quick to explain why they regard the leak as benign, often framing it as magnitudes less dangerous than a dental X-ray.”

Hancock is again given final opportunity for rebuttal on the topic of radiation levels.

*The New Mexican* should probably note that the “citizens of Carlsbad and city leaders,” in this instance, are flat out right. Every single agency, the DOE, the EPA and even groups of scientists historically opposed to WIPP have said that the levels of exposure in this instance were not dangerous. The radiological leak was significant in that it happened at all when it should not have happened- and subsequent investigations have revealed serious lapses that led to the problem- but WIPP’s radiological incident is best (and thankfully) categorized as a near miss.

When residents DO express safety concerns, such as those that were voiced by Mayor’s Nuclear Task Force Chair John Heaton in his lengthy interview with the *New Mexican’s* reporter, those concerns don’t make the final article. Why? Presumably because they do

not express the author’s script that Carlsbad residents don’t value safety.

The *New Mexican* appeared to have decided on the narrative and ignored any evidence counter to this preset picture. The lure of the “company town” mentality alleged by Don Hancock is certainly something to be avoided, but Carlsbad residents have, now and historically, largely avoided such a pitfall. Blind support and blind opposition are equally dangerous traps, and a woman at a local diner who thinks WIPP is generally safe may just be right.

The media plays an incredibly important role in bringing information to light in our society, and in no instance is that role more important than when it comes to examining government operations. Over the past few months *The New Mexican* has done a commendable job of sifting through thousands of emails between officials with the Waste Isolation Pilot Plant and Los Alamos National Laboratory to expose miscommunication and concerns.

However, we are concerned that *The New Mexican’s* reporting of the radiological event at the Waste Isolation Pilot Plant has become highly lopsided. There are those who may celebrate this form of activist journalism. Strongly-left and strongly-right leaning publications, after all, have become the norm for our society. However, we believe the newspaper that represents the state capital should strive to cover all facets of a complex issue.

Save the editorializing for the editorial page.

\* *Unless expressed otherwise, opinions in the “Nuclear Nexus” are those of Carlsbad Mayor Dale Janway and Task Force Chair John Heaton.*