

DNSFB Hearing Comments Albuquerque Convention Cnt 2-21-19, 5:30pm

My name is John Heaton, and I am chairman of the Mayor's Nuclear Task Force in Carlsbad, NM, home of the Waste Isolation Pilot Plant (WIPP). We appreciated all the time the Board spent at WIPP after the accident and with the community at town hall meetings. I will not comment specifically on the findings of the several external investigations of the DNFSB including the OIG and the National Academy of Public Administration. They seem to identify what seems to reveal a chaotic board with significant communication and procedural processes problems that are in desperate need of fixing. I must say, it is difficult to believe there is no executive director working between the staff and the board. Otherwise, I will only say from an outsider's point of view that the chaos appears to be affecting the organizations ability to effectively work to protect human and health and safety.

We have significant concerns regarding the DOE Order 140.1 and its curtailment of DNFSB access to contractors, employees, information and the obstacles put in place for them to carry out their independent function of protecting the public health and safety. We have numerous regulators at WIPP including the EPA, NMED, DOE EA, MSHA as well as DNFSB. Our Task Force believes that the DNFSB and MSHA play an important role in providing the only real credible independent oversight of the WIPP facility. We have bi-monthly meetings with DOE and the Contractor and quarterly townhall meetings, but our Task Force is hardly in a position to oversee the WIPP project with all of its complications. DOE and the Contractor are fully transparent when we ask the right questions, not that they are trying to hide anything, but we generally only become informed about issues after the fact rather than their prevention or nipping them in the bud before they are an issue. MSHA is very proactive and continues to hammer on findings until they are corrected. We don't have that scrupulous and preventive oversight on the waste handling side of the equation where we would expect DNFSB to be very active. Our Task Force is seeking clarification on three primary aspects of Order 140.1:

Access – as you are aware, WIPP is a Haz/Cat 2 facility, and is presently a facility overseen by the Board. In 140.1 WIPP would be eliminated as a facility subject to DNFSB access or oversight. We believe this clearly interferes with the statutory

authority of the DNFSB and would reduce the public health and safety of WIPP and undermine the confidence of the public;

Oversight on-site – DOE in 140.1 attempts to redefine “public” as only the “health and safety of individuals located beyond the site boundaries of DOE facilities. We strongly believe this is a specious argument and the “public” health and safety clearly includes the workers inside the fence as well as those outside of it and the “public” in general. However, if the intent is to use the definitions of risk as defined by DOE, the Nuclear Regulatory Commission and others to address risk factors related to operations, then the language should be stated in a way that does not give the impression that DNFSB should not have any oversight of any DOE/NNSA on-site activities. All problems that have ever occurred off site are caused by onsite activities. We agree with DNFSB when it contends that this interpretation is “inconsistent with the Atomic Energy Act and with long-standing historical precedence.” Sites have many hazards aside from radiological that should fall within the purview of the DNFSB. As an example, the possibility of a fire at WIPP had been pointed out since 2011 and the mixing of organics with oxidizers was clearly prohibited by WIPP, and yet DOE wants to limit access to situations and conditions that are highly risky; and

Restrictions on access to information – restrictions on “pre-decisional” and other similar information is too restrictive, and the proposal would require a bureaucratic process whereby all informational requests must go through a site liaison. We all know what that means, it will ultimately have to go to HQ, then to GC and an answer will never be forthcoming and the preventable accident will have occurred. Restricting access to documents, conversations with contractors, workers and individuals frequently means the elimination of rational and real source information. We believe this proposed process interferes with DNFSB’s statutory authority to make determinations on the information it needs to carry out its responsibilities.

WIPP Fire & Rad Release – While a new DSA exists at WIPP, and many changes have been made related to fire hazard and confirmation of the characterization of treatment of waste and presumably the full Acceptable Knowledge of the waste coming to WIPP are now being reviewed prior to certification of the waste for shipment. These are simply processes and we had processes before that were

not followed. How do we know they are being followed now without independent verification? The DNFSB had been warning DOE and the contractor at WIPP about fire hazards since 2011. To no avail, no attention was paid to the warnings, a fire occurred and 86 men could have easily lost their lives. This was not a direct rad risk problem, but could have easily been if the fire had been in a waste room. This was a facility operations problem that should have been fixed, and represents failure by the Board to insist and failure of DOE and the contractor to give the problem a credible possibility. Also, the pressure to complete the 3706 campaign to move waste from Los Alamos without verifying waste preparation to the standards recommended by WIPP for oxidizers as to ignitable, combustible standards resulted in the radioactive accident that occurred. Even though WIPP is a TRU waste repository, it is also a mine, and it receives mixed waste with a variety of constituents. WIPP is a Haz Cat 2 facility, BUT it is much more complicated than the risk category applied by DOE and NRC. The WIPP accidents will result in more than \$3 billion in costs to get back to normal and take up to 10 years. So, using the cost savings approach for DOE justification versus strong oversight to forge good safe operations is folly. Open access is a must.

Reporting by DNFSB – The reporting process of findings as I understand it, includes verbal reprimands at exit interviews, letters of lesser concerns and formal reports to the secretary. The process for reporting seems to be too nebulous with no bright lines of what rises to what levels. First of all, verbal findings to be addressed are meaningless. Secondly, the internal process for DNFSB to follow findings has now been changed several times in the last year to correct the tracking. Every site has a web page and DNFSB should place their findings, the corrective actions for their findings and the date of completion of the finding correction on each sites web page must occur. This transparency would then provide for public monitoring, and I guarantee you it will have a dramatic accountability impact on every site's operation.

In closing we are confident that all parties are interested in improving operations, safety, and decreasing costs while ensuring the safety of the workers and communities at the sites. Eliminating the oversight of the DNFSB will only increase costs and reduce quality of operations. We strongly support the independent oversight of the DNFSB, and oppose eliminating them from WIPP oversight.