

Mr. David B. McCoy
Citizen Action New Mexico
P.O. Box 4276
Albuquerque, NM 87196-4276

Via e-mail: dave@radfreenm.org

Department of Energy
Washington, DC 20585

December 16, 2016
Re: HQ-2017-00262-F

Re:

Operational readiness review (ORR) for the reopening of the Waste Isolation Pilot Plant (WIPP), Unanswered Safety Questions (USQs); corrective action plans for the issues needed to be resolved prior to reopening; issues that will be resolved after the reopening after waste emplacement gets underway; and bonus amounts that would be awarded to Nuclear Waste Partnership for emplacement of the first drum of waste.

Dear Mr. McCoy:

Thank you for the request for information that you made to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on December 12, 2016, and has been assigned a controlled number, HQ-2017-00262-F. Since we receive several hundred requests a year, please use this number in any correspondence with the DOE regarding your request.

We are reviewing your request to determine if it addresses all of the criteria of a proper request under the FOIA and the DOE regulation that implements the FOIA at Title 10, Code of Federal Regulations, Part 1004. We will send you a subsequent letter to inform you if we need additional information or to state where the request has been assigned to conduct a search for responsive documents.

In your request, you asked for expedited processing of the request. You stated that the information requested is urgently needed because "the health and safety of individual workers, the public and the environment are placed at imminent and extreme risk by the carelessly planned and hasty reopening of the WIPP facility by the end of December 2016 without complete resolution of safety issues."

The FOIA permits agencies to expedite the processing of requests if requesters demonstrate a "compelling need." 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" is established when one of two criteria are met. 5 U.S.C. § 552(a)(6)(E)(v)(II). The criteria are met when (1) failure to obtain the records quickly "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," or (2) if the "requester is primarily engaged in disseminating information" and can demonstrate that there is an "urgency to inform the public concerning actual or alleged Federal Government activity." Id.

The reasons you have provided do not adequately address the basis for which a request may be expedited. You have not provided material that establishes that there is any threat to the life or safety of an individual that would justify expeditious processing of the request.

You also have not identified an actual or alleged activity that poses any particular urgency that requires the dissemination of information in an expedited manner. In order to determine whether a requester has

demonstrated an "urgency to inform," and hence a "compelling need," courts consider at least three factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity. *Al-Fayed v. C.J.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001); *Associated Press v. DOE*, Case No. TFA-0273 (September 11, 2008). Your request does not sufficiently address factors one or two.

For these reasons, I am denying your request for expeditious processing. The request will be processed in accordance with provisions of the FOIA.

You may challenge the denial of your request for expedited processing by submitting a written appeal to the Director, Office of Hearings and Appeals, at HG-1/L'Enfant Plaza Building, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. You may also submit your appeal by e-mail to OHA.filings@hq.doe.gov, including the phrase "Freedom of Information Appeal" in the subject line. You should submit the appeal within 90 calendar days of receipt of this determination. The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. The appeal must contain elements required by 10 CFR § 1004.8, including a copy of this letter. Judicial review will thereafter be available in the Federal District Court either (1) in the district where you reside; (2) in the district where you have your principal place of business; (3) in the district where the DOE's records are located; or (4) in the District of Columbia.

You may contact DOE's FOIA Public Liaison, Alexander MmTis, FOIA Officer, Office of Public Information, at 202-586-5955 or by mail at MA-46/Forrestal Building 1000 Independence Avenue, S.W. Washington, D.C. 20585 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Please refer to the above referenced number in any communications with the DOE about the request. If you have any questions about the processing of the request or this letter, you may contact Ms. Camille Aponte-Rossini at MA-46/ Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, or at 202-586-7504.

I appreciate the opportunity to assist you.
Office of Public Information