

Evaluation of the U.S. Environmental Protection Agency's Public Outreach Program during the Certification Process at the Waste Isolation Pilot Plant in New Mexico

**Submitted by Phoenix Environmental and EnviroIssues
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Executive Summary

In July 2000, the U.S. Environmental Protection Agency (EPA) Office of Radiation and Indoor Air (ORIA) contracted with Phoenix Environmental and EnviroIssues (the Consultant Team) to evaluate the effectiveness of its public outreach program during its certification of the Waste Isolation Pilot Plant (WIPP) in Carlsbad, New Mexico. The evaluation was charged with identifying strengths and weaknesses of the program and "lessons learned" for EPA to consider as it prepares for the WIPP recertification process.

The evaluation consisted of 54 interviews of stakeholders from the general public, interest groups, and local, state and federal government. Interviews were conducted over the telephone, in person, and in focus groups. In addition, the evaluation team examined EPA outreach documents, the EPA WIPP web site, EPA WIPP public dockets, and toured the WIPP facility.

Findings

The evaluation team found that EPA's role, the situation that existed prior to EPA's involvement, and the constraints of the rulemaking process were all critical to the evaluation of EPA's public outreach program. Key findings with regard to these issues are summarized below.

EPA inherited a difficult situation and a polarized public. The WIPP saga had been playing out for almost two decades before EPA was directed to play a role. Most stakeholders had already determined their support or opposition to WIPP and had been exposed to a great deal of information prepared by both the Department of Energy (DOE) and outside groups. The strong desire to see WIPP either opened or shut down caused a polarizing effect on all public involvement activities with regard to WIPP which largely influenced stakeholders' opinion of EPA.

EPA's role was limited. EPA had a focused role in the WIPP decision process to certify that the WIPP could safely contain transuranic waste. This role was narrower than the scope of issues that were important to the public. As a result, EPA was not able to engage the public in the full range of issues that were important to them.

EPA had a steep learning curve on WIPP-related issues. Initially, EPA did not have extensive in-house expertise in transuranic waste management and other WIPP-specific

issues that framed its evaluation. DOE appropriately held much of the information that EPA required. As a result, EPA required a close working relationship with DOE early in the process, which fueled a public perception of collusion between the two agencies.

The rulemaking process constrained dialogue. Under EPA rulemaking, the final decision is made by the Administrator and EPA staff may not speak for the Administrator. While EPA staff sought public input, they were careful not to make major decisions prior to a formal certification proposal. Thus, communication with the public was often one-way and many stakeholders felt that they did not have the kinds of information and feedback they needed from EPA in adequate time.

In order to facilitate understanding of how EPA performed public outreach in relation to its stated objectives, the evaluation looked at the activities and objectives identified by EPA in the December 1995 *Communications Plan for the WIPP*. This plan was developed in response to the August 1993 *Public Consultation and Communications Needs Assessment* which was commissioned by EPA from an independent consultant to identify the public consultation and communication needs of the New Mexico public. Seven suggestions were adopted from the *Needs Assessment* into the *Communications Plan*:

- Full Disclosure of Information Related to WIPP
- Integrity in EPA's Decision-Making Process
- Include the Public in Meetings
- Provide Early Notification about WIPP Meetings
- Conduct Activities Openly and Consult the Public When Making Decisions
- Meet the Needs of the Geographically- and Culturally-Diverse Population
- Respond to All Public Inquiries and Suggestions

The evaluation looked at each of these suggestions as well as the twelve communication elements identified in the *Communications Plan* including public outreach materials, public hearings, dockets, information line and web site.

Analysis

EPA far exceeded regulatory requirements for public outreach and performed many of the elements of its public outreach program extremely well. Individually, each of the suggestions that were adopted from the *Needs Assessment* were achieved with some success. EPA public outreach staff extended considerable commitment and energy to making its public outreach efforts successful.

However, the restrictions placed on EPA as part of its regulatory rulemaking process prevented it from fully achieving its stated commitments under its public outreach program. Specifically, EPA sought to keep the public informed and involved in the decision-making process. While keeping the public well informed about its actions, EPA was unable to involve the public in the key aspects of the decision-making in which they were most interested.

EPA far exceeded regulatory requirements for public outreach. EPA was required to do relatively little public participation by law. However, EPA understood that public outreach was important to the process and that the public required a great deal of information. As a result, EPA did far in excess of what was required. The *Needs Assessment* identified a number of characteristics for EPA to incorporate into its public outreach program. EPA took this to heart and made a strong effort to create an open process, developing background materials, opening technical meetings, and holding multiple hearings throughout the state.

EPA's stated communications objectives could not be achieved within the regulatory constraints. EPA stated in several places that its communications objectives for the WIPP project were to "keep the public informed and involved in the decision-making process." In its formal commitment, EPA stated that it "seeks public participation in proposed decisions." "Involvement" and "participation" imply a level of interaction and dialogue, which, in reality, could not be achieved under the rulemaking process and approach that the Agency was required to follow.

EPA's role was narrow, while public interests were broad. Because the WIPP decision was viewed as an "open or shut down" question in much of the public's mind, EPA's role was not the context for most public interactions. In many instances, EPA and the public were simply not addressing the same problem. EPA faced the problem "how to make WIPP safe," while the public was addressing "how to open/prevent opening WIPP."

Existing interest groups dominated EPA's resources. The high demands of existing interest groups combined with EPA's relatively limited resources may have limited EPA's ability to serve a broader stakeholder audience. A few interest groups dominated EPA's time and were, in truth, among the only stakeholders who themselves could take the time necessary to digest the vast amounts of information that were needed to fully understand WIPP.

Public hearings were too limited for the full scope of public concerns. Hearings were well attended and EPA did a good job listening to the public. However, the lack of public understanding of EPA's role and/or the public's desire for more impact on the WIPP decision than EPA could provide made the public believe that the hearings were more important to the overall question of opening WIPP than they were. Many of the hearing attendees were looking for an opportunity to discuss a broader scope of issues and for greater ability to impact the WIPP decision.

EPA could not share the results of technical evaluations to inform public concerns. EPA's policy is to not share its technical evaluations and final conclusions until the EPA Administrator reaches a decision. Even with considerable effort, most stakeholders did not feel they were able to address their main concerns with the information in the form it was provided. It was difficult for the average stakeholder to keep up with the WIPP certification process. The process moved too fast and too much complex information was available without any forum or format devoted to helping the average stakeholder understand issues.

EPA could not respond to stakeholder concerns in time. The *Response to Comments* document was not available until after the certification decision was made. As a result, though the document was placed in the public docket, very few stakeholders have reviewed it. According to EPA, some technical issues that were raised by stakeholders had a direct impact on EPA's evaluation. But according to some stakeholders, feedback on these impacts was not adequately described to the stakeholders who made the original comments. As a result, there is little understanding by stakeholders of how their input impacted EPA's decision-making.

Recommendations

Clarify EPA's role and create a clear picture of recertification. EPA should begin its communications efforts for recertification now. There are many issues arising regarding WIPP that will have significant impacts on the recertification process. There is a widespread perception that recertification is simply a formality. EPA should create a very clear picture of what recertification will and will not entail.

Develop clear public participation goals and a promise to the public that are achievable within EPA's role. EPA should design a process from the beginning that has full management support and will provide stakeholders with an opportunity for meaningful involvement. EPA should clarify its role and independence and tie the public participation goals and process very closely to this role.

Develop a specific public participation plan. A detailed plan should be developed to identify both what EPA expects to achieve through public participation and how this will be done.

Start now to work with key stakeholder groups. EPA should open a dialogue with the major groups of WIPP stakeholders to begin to explore how they would like to be involved in the recertification process. As part of this overall effort, EPA should continue to explore ways to engage additional stakeholders in the process. EPA should seek out and meet with community leaders and civic organizations that have not been previously involved.

Establish a higher visibility in New Mexico. EPA needs more one-on-one and small group interactions with the New Mexico public. Technical and public participation points of contact need to be established.

Begin to provide information on recertification issues. There are many issues that could potentially change the scope and mission of the WIPP. EPA should be a part of these discussions and provide information about how these issues relate to EPA's charge for overall safety and ultimately to recertification.

Provide accessible information and opportunities for dialogue on the important and complex issues. EPA must develop a process for providing more detailed information to address the technical issues that are of public concern. EPA should clarify,

both internally and with the public, the degree to which it can inform and participate in technical discussions.

Conclusion

This evaluation and its recommendations represent an independent assessment of EPA's public outreach activities with regard to certification of the WIPP. The analysis of the strengths and weaknesses of EPA's activities are solely those of the authors.

The authors recognize the difficult job and challenging circumstances EPA faced in the certification of WIPP. They also recognize that EPA generally put forth a very strong effort to ensure an open process in which all stakeholders were heard. The authors perceived their job to be to hold up the EPA program against the highest standards of public participation with regard to the objectives outlined in EPA's *Communications Plan*. In doing so, they recognized a number of areas in which EPA can improve and have provided specific suggestions for making those improvements.

The authors also recognize that the degree to which EPA is able to implement these recommendations will depend upon the restrictions of the recertification process and available resources. EPA must develop an outreach program that they believe can be implemented successfully. To do this, EPA must first clearly identify the real constraints within which they must work and then work with stakeholders to identify detailed goals and objectives for the public outreach program and clearly describe these to all stakeholders. EPA should also use the time before the formal recertification process begins to engage stakeholders and discuss the many technical issues that are likely to shape the recertification dialogue. During this time, EPA has more freedom to participate in true technical dialogue with the public and can provide the public with a great deal of the information it is likely to need.

