



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[EPA-HQ-OAR-2014-0609; FRL-9958-69-OAR]

Notification of Completeness of the Department of Energy's Compliance Recertification Application for the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of completeness of recertification application and announcement of end of public comment period.

SUMMARY: The Environmental Protection Agency (EPA or “the Agency”) has determined that the Department of Energy’s (DOE) Compliance Recertification Application (CRA or “application”) for the Waste Isolation Pilot Plant (WIPP) is complete. The EPA provided written notice of the completeness decision to the Secretary of Energy on January 13, 2017. The text of the letter is contained in the **SUPPLEMENTARY INFORMATION**.

The Agency has determined that the application is complete, in accordance with EPA regulations. The completeness determination is an administrative step that is required by regulation, and it does not imply in any way that the CRA demonstrates compliance with the Compliance Certification Criteria or the disposal regulations. The EPA is now engaged in the full technical review that will determine if the WIPP remains in compliance with the disposal regulations. As required by the 1992 WIPP Land Withdrawal Act and its implementing regulations, the EPA will make a final recertification decision within six months of issuing the completeness letter to the Secretary of Energy.

DATES: The EPA opened the public comment period upon receipt of the 2014 CRA (79 FR 61268, October 10, 2014). Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2014-0609, to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information of which disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Ray Lee, Radiation Protection Division, Center for Radiation Information and Outreach, Mail Code 6608T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC, 20460; telephone number: 202-343-9463; fax number: 202-343-2305; e-mail address: lee.raymond@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions - The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

II. Background

The Waste Isolation Pilot Plant (WIPP) was authorized in 1980, under section 213 of the DOE National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Pub. L. 96-164, 93 Stat. 1259, 1265), "for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States." The WIPP is a disposal system for transuranic (TRU) radioactive waste. Developed by the DOE, the facility is located near Carlsbad in southeastern New Mexico. TRU waste is emplaced 2,150 feet underground in an ancient layer of salt that will eventually "creep" and encapsulate the waste containers. The WIPP has a total capacity of 6.2 million cubic feet for TRU waste.

The 1992 WIPP Land Withdrawal Act (LWA; Pub. L. 102-579)¹ limits radioactive waste disposal in the WIPP to TRU radioactive wastes generated by defense-related activities. TRU waste is defined as waste containing more than 100 nano-curies per gram of alpha-emitting radioactive isotopes, with half-lives greater than twenty years and atomic numbers greater than 92. The WIPP LWA further stipulates that radioactive waste shall not be TRU waste if such waste also meets the definition of high-level radioactive waste, has been specifically exempted from regulation with the concurrence of the Administrator, or has been approved for an alternate method of disposal by the Nuclear Regulatory Commission. The TRU radioactive waste proposed for disposal in the WIPP consists of materials such as rags, equipment, tools, protective gear and sludges that have become contaminated during atomic energy defense activities. The

¹ The 1992 WIPP Land Withdrawal Act was amended by the "Waste Isolation Pilot Plant Land Withdrawal Act Amendments," which were part of the National Defense Authorization Act for Fiscal Year 1997.

radioactive component of TRU waste consists of man-made elements created during the process of nuclear fission, chiefly isotopes of plutonium. Some TRU waste is contaminated with hazardous wastes regulated under the Resource Conservation and Recovery Act (RCRA; 42 U.S.C. 6901-6992k). The waste proposed for disposal at the WIPP derives from federal facilities across the United States, including locations in California, Colorado, Idaho, New Mexico, Nevada, Ohio, South Carolina, Tennessee and Washington.

The WIPP must meet the EPA's generic disposal standards at 40 CFR part 191, subparts B and C, for high-level and TRU radioactive waste. These standards limit releases of radioactive materials from disposal systems for radioactive waste, and require implementation of measures to provide confidence for compliance with the radiation release limits. Additionally, the regulations limit radiation doses to members of the public, and protect ground water resources by establishing maximum concentrations for radionuclides in ground water. To determine whether the WIPP performs well enough to meet these disposal standards, the EPA issued the WIPP Compliance Certification Criteria (40 CFR part 194) in 1996. The Compliance Certification Criteria interpret and implement the disposal standards specifically for the WIPP site. They describe what information the DOE must provide and how the Agency evaluates the WIPP's performance and provides ongoing independent oversight. The EPA implemented its environmental radiation protection standards, 40 CFR part 191, by applying the Compliance Certification Criteria to the disposal of TRU radioactive waste at the WIPP. For more information about 40 CFR part 191, refer to **Federal Register** documents published in 1985 (50 FR 38066-38089, Sep. 19, 1985) and 1993 (58 FR 66398-66416, Dec. 20, 1993). For more information about 40 CFR part 194, refer to **Federal Register** documents published in 1995 (60 FR 5766-5791, Jan. 30, 1995) and in 1996 (61 FR 5224-5245, Feb. 9, 1996).

Using the process outlined in the Compliance Certification Criteria, the EPA determined on May 18, 1998 (63 FR 27354), that the DOE had demonstrated that the WIPP facility will comply with the Agency's radioactive waste disposal regulations at subparts B and C of 40 CFR part 191. The Agency's certification determination permitted the WIPP to begin accepting transuranic waste for disposal, provided that other applicable conditions and environmental regulations were met. The DOE began disposing of TRU waste at the WIPP in March 1999.

Since the 1998 certification decision (and the 2006 and 2010 recertification decisions), the EPA has conducted ongoing independent technical review and inspections of all WIPP activities related to compliance with the Agency's disposal regulations. The initial certification decision identified the starting (baseline) conditions for the WIPP and established the waste and facility characteristics necessary to ensure proper disposal in accordance with the regulations. Section 8(f) of the amended WIPP LWA requires the EPA to determine every five years if the facility continues to comply with the Agency's disposal regulations. In accordance with that same section, this determination is not subject to standard rulemaking procedures or judicial review. The first recertification process (2004-2006) included a review of all of the changes made at the WIPP since the original 1998 EPA certification decision up until the receipt of the initial CRA in March 2004. Subsequently, the second recertification process (2009-2010) included a review of all the changes made at the WIPP since 2004 and up to the second CRA in March 2009. This third recertification process includes a review of all changes since 2009.

Recertification is not a reconsideration of the decision to open the WIPP, but a process to reaffirm that the facility meets all requirements of the disposal regulations. The recertification process will not be used to approve any new significant changes proposed by the DOE; any such proposals will be addressed separately by the EPA. Recertification will ensure that the WIPP is

operated using the most accurate and up-to-date information available and provides documentation requiring the Department to operate to these standards.

In a letter dated January 13, 2017, from the EPA's Director of the Office of Radiation and Indoor Air to the Secretary of Energy (full text of letter provided at the end of this document), the Agency notified the Department that the 2014 CRA for the WIPP is complete. This determination is solely an administrative measure and does not reflect any conclusion regarding the WIPP's continued compliance with the disposal regulations.

This determination was made using a number of the Agency's WIPP-specific guidances; most notably, the "Compliance Application Guidance" (CAG; EPA Pub. 402-R-95-014) and "Guidance to the U.S. Department of Energy on Preparation for Recertification of the Waste Isolation Pilot Plant with 40 CFR parts 191 and 194" (Docket A-98-49, Item II-B3-14; December 12, 2000). Both guidance documents include guidelines regarding: (1) content of certification/recertification applications; (2) documentation and format requirements; (3) time frame and evaluation process; and (4) change reporting and modification. The Agency developed these guidance documents to assist the DOE with the preparation of any compliance application for the WIPP. They are also intended to assist in the EPA's review of any application for completeness and to enhance the readability and accessibility of the application for the Agency and for the public.

The EPA has been reviewing the 2014 CRA for "completeness" since its receipt. The Agency's review identified several areas of the application where additional information was necessary to perform a technical evaluation. The EPA sent a series of letters to the DOE requesting additional information, and the Department provided documents and analyses in response to these requests. This correspondence is summarized in the enclosure sent with the

letter to the Secretary of Energy, and that letter – along with all other completeness-related correspondence – is available in the Agency’s public docket (www.regulations.gov; Docket ID: EPA-HQ-OAR-2014-0609). Links to the electronic docket and additional information are also available at the EPA’s WIPP website (<http://www.epa.gov/radiation/wipp>).

Since receipt of the 2014 CRA, the Agency has received a number of public comments from stakeholder groups regarding both the completeness and technical adequacy of the recertification application. In addition to soliciting written public comments, the EPA held a series of public meetings in New Mexico (June 2015) as well as an informal webinar (January 2017) to discuss stakeholders’ concerns and issues related to recertification. The Agency received a number of comments pertinent to the 2014 CRA, most notably related to the modeling parameters for performance assessment calculations, issues associated with the February 2014 radiological incident at the facility, and concerns regarding the reported WIPP waste inventory. These comments helped in developing the Agency’s requests for additional information from the DOE.

The EPA will now undertake a full technical evaluation of the complete 2014 CRA to determine whether the WIPP continues to comply with the radiation protection standards for disposal. The Agency will also consider any additional public comments and other information relevant to the WIPP’s compliance. The Agency is most interested in whether new or changed information has been appropriately incorporated into the performance assessment calculations for the WIPP and whether the potential long-term effects of changes are properly characterized.

If the Agency approves the application, it will set the parameters for how the WIPP will be operated by the DOE over the following five years. The approved CRA will then serve as the

baseline for the next recertification. As required by the WIPP LWA, the EPA will make a final recertification decision within six months of issuing its completeness determination.

January 13, 2017

Honorable Dr. Ernest Moniz
Secretary
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Dear Mr. Secretary:

Pursuant to Section 8(f) of the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act, as amended, and in accordance with the WIPP Criteria at 40 CFR § 194.11, I hereby notify you that the U.S. Environmental Protection Agency (EPA or “Agency”) has determined that the U.S. Department of Energy’s (DOE or “Department”) 2014 Compliance Recertification Application (CRA) for the WIPP is complete. This completeness determination is an administrative determination required under the WIPP Compliance Criteria, which implements the Radioactive Waste Disposal Regulations at subparts B and C of 40 CFR part 191. While the completeness determination initiates the six-month evaluation period provided in section 8(f)(2) of the Land Withdrawal Act, it does not have any generally applicable legal effect. Further, this determination does not imply or indicate that the DOE’s CRA demonstrates compliance with the Compliance Criteria or the Disposal Regulations.

Section 8(f) of the amended Land Withdrawal Act requires the EPA to determine every five years if the facility continues to comply with the EPA’s disposal regulations. This third recertification process includes a review of all changes made at the WIPP for the five-year period of March 2009 through March 2014.

Under the applicable regulations, the EPA may recertify the WIPP only after the Department has submitted a complete application (see 40 C.F.R. § 194.11). The DOE submitted the CRA on March 26, 2014. On September 29, 2014, the Agency began its official review to determine whether the application was complete. Shortly thereafter, the EPA began to identify areas of the 2014 CRA that required supplementary information and analyses. In addition, the Agency held informal public meetings on the CRA in Carlsbad and Albuquerque, NM in June 2015. As a result of these meetings, the Agency received public comments and identified areas where additional information was needed for the EPA’s review. A final webinar relating to this completeness evaluation – accessible online by any interested individuals (and with hosting locations in Carlsbad and Albuquerque, NM) – was held on January 12, 2017.

The Agency identified completeness concerns in a series of letters and correspondence to successive managers and their staff at the DOE’s Carlsbad Field Office (CBFO) during the completeness review period. This correspondence is summarized on the enclosed list.

All completeness-related correspondence has been placed in the public docket related to the 2014 CRA on www.regulations.gov (Docket ID#: EPA-HQ-OAR-2014-0609). This information also is available via the EPA’s WIPP website (<https://www.epa.gov/radiation/certification-and-recertification-wipp>).

The Agency has been conducting a preliminary technical review of the CRA since its submittal and has provided the DOE with relevant technical comments on an ongoing basis. Though the EPA has made a determination of completeness, the Agency will continue its technical review of the 2014 CRA, and will convey further requests for additional information and analyses as needed. The EPA will issue its compliance recertification decision, in accordance with 40 CFR part 194 and part 191, subparts B and C, after it has thoroughly evaluated the complete CRA and considered relevant public comments. The public

comment period on our completeness determination will remain open for 30 days following the publication of this letter in the Federal Register.

Thank you for your cooperation during our review process. Should your staff have any questions regarding this request, they may contact Tom Peake at (202) 343-9765 or peake.tom@epa.gov.

Sincerely,

Jonathan D. Edwards
Director
Office of Radiation and Indoor Air

Enclosure: List of EPA Completeness Correspondence and DOE Responses for the 2014 CRA

Dated: January 13, 2017.

Jonathan D. Edwards, Director,

Office of Radiation and Indoor Air.

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