

**Department of Energy**

Washington, DC 20585

3 December 2002

A-98-49.

VI - C - 1

EDOCKET #:

OAR-2002-0005-0014

Air Docket, Room M-1500
U.S. Environmental Protection Agency
401 M Street, SW
Mail Code 6102
Washington, D.C. 20460

Attention Docket ID No. OAK-2002-0005

Dear Sir/Madam:

The Department of Energy (DOE) supports many aspects of the Environmental Protection Agency's (EPA) proposed changes to 40 CFR Part 194, Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the Disposal Regulations. DOE endorses the proposed mechanism for making minor changes to provisions of the compliance criteria; the approval of DOE sites using a tiered approach; a reduction in the number of copies of compliance applications and reference materials; and the use of the term "acceptable knowledge" in place of "process knowledge." DOE recommends some minor changes to the proposed language for these provisions and requests that EPA conduct the baseline inspections of transuranic waste sites with current approval when DOE conducts the annual recertification audits. These changes enhance the flexibility EPA desires in its verification of the transuranic waste sites compliance with the disposal regulations, and should reduce the number of inspections required. DOE looks forward to working with EPA in applying this process.

However, the Department is very concerned about the proposed change to Section 194.8(b) that calls for the public comment period to be opened after, rather than before, the Baseline Compliance Decision. First, there was no time limit placed on the public comment period. Second, as discussed in our enclosed comments, this would not provide timely input to the EPA and could result in unnecessary operational delays and cost. Starting in 1999, the EPA has successfully audited DOE sites that are now characterizing and certifying waste for shipment to the Waste Isolation Pilot Plant. In view of the past history and experience, changing the regulations in a manner that could delay operations and increase cost is not justified. DOE requests that the current process for obtaining public comment be retained.



12/04/02 15:08 FAX 3019031431

EM-23

003

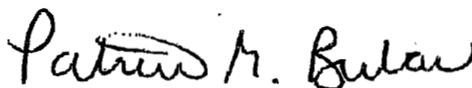
12/04/2002 12:41 FAX 202 586 5393

DOE EM-20

003

If you have any further questions, please contact me at (202) 586-5151 or
Lynne Smith, Director, Waste Isolation Pilot Plant Office, at (301) 903-6828.

Sincerely,



Patrice M. Bubar
Associate Deputy Assistant for
Integration and Disposition
Office of Environmental Management

Enclosure

ENCLOSURE

DOE endorses the change to Section 194.8 regarding approval of DOE sites' characterization programs and processes with broader application to waste streams and the tiered approach proposed by EPA for reporting changes.

EPA inspection and approval of a DOE site's characterization processes and procedures with application to future waste streams using the tiered approach will be a more efficient use of EPA and DOE resources. The use of tier assignments in EPA's baseline compliance decisions, as described in the proposed Section 194.8(b)(2)(iii), should add the flexibility EPA desires in its verification of the TRU waste sites' compliance with the disposal regulations and reduce the resource requirements for inspections. DOE looks forward to working with EPA in applying this process at its waste sites.

EPA should revise the language proposed in Section 194.8(b)(2)(i).

The proposed language reads, "*DOE will notify EPA by letter that a transuranic waste site is prepared to ship waste to the WIPP and has established adequate waste characterization processes and programs.*" DOE believes this requirement should be modified. The Nuclear Regulatory Commission (NRC) and the Department of Transportation (DOT) regulate transportation programs at the sites, not EPA. It is possible that a TRU waste site may have established a waste characterization program ready for audit and operation upon approval by EPA, but DOE may not have completed audits or surveillances of a site's transportation program to determine whether it meets NRC and DOT requirements.

Typically, EPA inspections are conducted concurrently with DOE audits of TRU waste sites. These audits are currently performed under the direction of the Carlsbad Field Office (CBFO) Quality Assurance Team. Until these audits are completed, and any deficiencies that are identified are corrected, DOE cannot make an affirmative statement that the TRU waste site has "*established adequate waste characterization processes and programs.*" If it were discovered, during a CBFO audit or EPA inspection, in fact, the site did not have adequate processes or programs, it could be construed as a violation of the regulation, which DOE does not believe was EPA's intent.

DOE recommends that the first sentence of Section 194.8(b)(2)(i) be revised to read, "*DOE will request, by letter, that EPA perform an inspection of the waste characterization processes and programs at a transuranic waste site.*"

DOE believes that the proposed change to Section 194.8(b) for public comment period after, rather than before, the "Baseline Compliance Decisions," would result in unnecessary operational delays and cost.

DOE believes that the current process of notice in the Federal Register of site characterization plans and a 30-day public comment provides a better opportunity for public understanding and participation. The present process: informs the public of DOE's intent to characterize waste at a particular site for disposal at WIPP, provides access to the documents describing the processes and procedures to be used and an opportunity to comment to EPA on the sufficiency of these processes prior to a Baseline Compliance Decision. EPA proposes to give notice in the Federal Register at the time of its proposed compliance decision and then allow for public comment. This would not provide timely comments to EPA regarding its inspection, and could delay approval of site characterization and certification programs.

The new requirements of Section 194.8(b)(2)(iii) provide for EPA's receipt of public comment on its proposed decision to accept a site's Baseline Compliance Decision. However, no time limit is imposed (although a 30-day limit was implied in the EPA discussion of the proposed rule) on how long the comment period would be open. Since any Baseline Compliance Decision would be well documented (relevant inspection reports and supporting details) in the docket, a protracted public comment period is unnecessary. Although DOE prefers that the present process for public comment be retained, if EPA changes the rule, it should specify a short fixed period for accepting comments. DOE suggests a limit of 30 days for public comment.

As previously noted, DOE requests that the current process be retained. If EPA does not accept this request, DOE recommends, as an alternative, that EPA approve a site to characterize the waste for disposal at the time of EPA's proposed Baseline Compliance Decision but have a temporary hold where the characterized waste is retained at the site.

In the event an issue arises regarding approval, EPA has the authority to conduct further investigations and require corrective actions under Section 194.24(h).

DOE, in order to prepare for an EPA inspection, must acquire, install, and make operational all equipment, complete all procedures, train workers to those procedures, establish an acceptable quality control program, and process transuranic waste through the system to demonstrate compliance with the regulatory requirements. DOE will have committed considerable resources to meet the regulatory requirements. Also, EPA has conducted many successful inspections at five DOE sites. The experience gained with the characterization processes and procedures and inspections are such that significant problems are not anticipated. However, a 30-day public comment period, after EPA has completed its inspection and found the operations to comply with the regulations, would result in additional delay of characterization and waste disposal and unnecessary costs to the government and public.

The justification provided in EPA's discussion of the proposed rule change does not provide sufficient support for changing the current process given the experience to date and the potential adverse impacts. DOE requests that the current process for public comment be retained.

DOE requests that EPA conduct the baseline inspections of transuranic waste sites with current approval when DOE conducts the annual recertification audits.

It has been EPA's practice to perform its inspections of the sites concurrently with DOE's audits of the sites. DOE believes that this practice has been beneficial to both DOE and EPA. The interaction between DOE auditors and EPA inspectors has resulted in thorough and detailed examinations of the sites compliance with the disposal regulations while minimizing the impact on site resources. DOE requests that this practice be continued and that baseline inspections needed for currently approved sites be performed during the next annual recertification audit after approval of the revised rule.

DOE endorses the reduction in the number of copies of compliance applications and reference materials as proposed in the change to Section 194.12 and Section 194.13.

This change will reduce costs and improve the efficiency of these activities.

DOE endorses the use of "acceptable knowledge" in place of "process knowledge as proposed in the change to Section 194.24(c)(3)."

The term "acceptable knowledge" is appropriate for the TRU program. The definition provided in the proposed Section 194.2 is correct and well written.