

August 3, 2001

Stephen D. Page, Director
Office of Radiation and Indoor Air
U.S. Environmental Protection Agency
Washington, DC 20460



VIA FAX and U.S. MAIL

Dear Mr. Page,

We are writing to express our strong concerns about the Department of Energy (DOE) procedures at the Idaho National Engineering and Environmental Laboratory (INEEL) related to the Waste Isolation Pilot Plant (WIPP) and how the Environmental Protection Agency (EPA) is handling DOE's noncompliance with its WIPP certification. We also request an extension of time of at least 30 days for the public comment period announced on July 13, 2001 (66 Federal Register 36723).

We find it shocking that DOE would have shipped "approximately 800 drums that were not properly certified" from INEEL to WIPP as you indicated in your July 9, 2001 letter to Dr. Inés Triay of DOE. We also believe that INEEL's use of uncertified procedures for more than six months without that noncompliance being discovered raises serious questions about the adequacy of DOE and EPA procedures. We are very concerned that EPA is apparently prepared to approve the significant violations of the WIPP certification and to allow those improperly certified drums to be disposed at WIPP and to do so without adequate notice to the public and without any effective opportunity for public comment.

Procedures at INEEL

Based on documents available to the public (Docket A-98-49, II-A2-31), INEEL was using the Waste Assay Gamma Spectrometer (WAGS) system to characterize waste drums to be shipped to WIPP effective December 7, 2000 (TPR-1561). That WAGS system was not then, and still is not, certified by EPA. Instead, EPA has certified the SWEPP Gamma Ray Spectrometer (SGRS) system. Based on the documents in the docket, it is impossible for EPA or the public to know how many drums were certified using the WAGS system because none of the documents in the docket describe what characterization and quality assurance (QA) procedures were used on the 1,917 drums with waste in the 69 shipments that INEEL made to WIPP between December 7, 2000 and June 27, 2001 (INEEL shipments KN001201 and 1202, IN010031 to 010097 -- WIPP Waste Information System data).

The docket also provides no documentation regarding how the WAGS system actually performed during the more than six months that it was used, prior to EPA's verbal notice to stop using the system on June 27, 2001. The docket does show that some changes were made to the WAGS system effective May 9, 2001 (TPR-1654), indicating that the system was not used in the same way during the entire time period in question. Thus, the docket provides no basis for EPA, or the public, to conclude that the WAGS System actually operated in a manner equivalent to the SGRS system for any or all of the period that it was being used as part of the waste characterization process. Neither EPA, nor the public, can conclude that the drums shipped to

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WIPP were adequately characterized, so the question of what should now be done with those drums at WIPP cannot be answered based on documents currently available to the public. We believe that EPA cannot make any decision about the status of those drums without adequate documentation being made available to the public. EPA's rules require "a public comment period of at least 30 days" on DOE's quality assurance plans and other documentation (40 CFR 194.8(a)(2)) and on DOE's waste characterization programs (40 CFR 194.8(b)(2)).

DOE and EPA procedures

EPA officials and Dr. Inés Triay of DOE have said that the Carlsbad Field Office (CBFO) was unaware that INEEL was using the WAGS system until June 20, 2001. However, the documents in the docket indicate that CBFO officials knew, or should have known, at least as of May 1, 2001 that the WAGS system was being used. The docket contains a May 18, 2001 memorandum from Dr. Triay to Beverly Cook, Idaho Operations Office Manager, which states that surveillance S-01-06 was conducted on May 1, 2001 and that INEEL procedures reviewed included TPR-1719, Calibration of Gamma Assay System. While TPR-1719 is not included in its entirety in the docket, the pages that are included show that by November 28, 2000 the WAGS system passed the calibration procedure (page 10 of 13). (SGRS was not calibrated at that time, so there is no information in the docket to confirm that SGRS is now correctly calibrated.) Thus, CBFO officials participating in the May 1 surveillance had clear evidence that WAGS was being used. That date is seven weeks before June 20, when CBFO says it was informed. Either DOE did not properly inform EPA of the events or officials within CBFO who were aware of the use of uncertified procedures did not pass that information up the chain of command, including to Dr. Triay, who gave the homogeneous solid waste certification authority on May 18.

We believe that CBFO must fully explain the discrepancy in when it knew that the WAGS system was being used. Furthermore, since CBFO knew that INEEL was rushing to accelerate its shipments, it seems likely that there would have been discussion about what equipment would be used to accelerate characterization activities. We believe that CBFO's explanation should be included in the documentation available for public comment. In absence of an explanation to the contrary, it appears that DOE has violated 40 CFR 194.4(b)(3)(i) since it did not notify EPA in advance about the change in using the WAGS system. It appears that DOE also did not comply with 40 CFR 194.4(b)(3)(v) regarding reporting the change to the WAGS system in a timely manner.

Furthermore, EPA should explain why it did not know that an uncertified system was being used on hundreds of drums for more than six months. Such a violation of the EPA certification indicates that EPA must have better procedures and/or revised rules to address such situations to prevent their recurrence.

The WAGS system

Based on the documents in the docket, we cannot conclude that the WAGS system meets the quality assurance requirements of 40 CFR 194.8(a). The Quality Assurance Project Plan

(QAPjP) for INEEL (revision of 6/4/01) included in the docket does not specifically discuss the WAGS system, nor QA procedures for gamma assay. In the absence of specific procedures, it cannot be determined that the WAGS complies with procedures. We believe that the QAPjP must be revised to incorporate specific QA procedures for the WAGS system. Then the WAGS system standard operating procedures (TPR-1654) must be evaluated based on those requirements.

Based on the documents in the docket, we also cannot conclude that the WAGS system meets the waste characterization requirements of 40 CFR 194.8(b). Clearly, the system of controls for the WAGS system is not adequate nor equivalent to that for the SGRS since the latter system was certified by EPA and the WAGS system was used for months without being certified. Further, because there are differences in operations of the two systems, training requirements are different. The docket does not provide adequate information about training protocols and actual training results, so the adequacy and effectiveness of training cannot be determined.

The report of the EPA July 2-3, 2001 inspection at INEEL is discussed in your letter of July 9 to DOE, and the Federal Register notice states that it is in the docket, but that report is not in the docket in Albuquerque. It was made available via email only in partial form without references on August 2. We believe that report should be available for at least 30 days of public comment, as EPA has indicated that it is, prior to EPA making any determination about the adequacy of the WAGS system and its implementation, as required by 40 CFR 194.8(b)(2).

The 800 drums

In addition to making determinations about certification of the WAGS system and evaluating the implementation of the WAGS system, EPA must also make a determination as to what to do with the "approximately 800 drums" characterized using the WAGS system prior to June 27, 2001. The WAGS system was used in violation of 40 CFR 194.24(c)(4) regarding the waste characterization system of controls. Your letter of July 9, 2001 to DOE clearly states that you have made no final determination about the status of either the drums already emplaced at WIPP or the drums that you have told DOE "should be held on the surface."

As noted above, the docket provides no documentation regarding how INEEL or EPA determined which drums were characterized using the WAGS system, how the WAGS system was used and how its use changed during the time period in question, as to the nature of the process knowledge documentation for those drums, or other relevant information. Thus, based on what is available in the docket, the public cannot adequately comment on the status of those drums, nor does EPA have adequate information to make its determinations. We believe that there must be adequate documentation provided for public comment before EPA makes its determinations.

EPA's public comment process

As specified in its Federal Register notice of July 13, 2001 (66 Fed. Reg. 36723), EPA is providing its normal 30-day public comment period on "waste characterization program

documents." However, the current situation is not normal, it is the most complex yet faced by EPA involving a site's waste characterization program. In such an abnormal situation, a longer public comment period is necessary, and it is clearly allowed by 40 CFR 194.8. In addition, the fact that important documents are not yet available necessitates an extension of the public comment period to allow public comment on the appropriate documentation.

Our requests

1. Extend the public comment period for at least 30 days and ensure that needed documentation is available during that extension.
2. Withhold making final determinations about the WAGS system, its implementation, and what to do with the drums characterized by the WAGS system until EPA fully considers all comments during the extended public comment period.
3. Require CBFO to explain the discrepancy between its statements that it first learned of the use of the WAGS system on June 20, 2001 and the clear evidence in the docket that its officials knew, or should have known, at least at the time of the May 1, 2001 surveillance that WAGS was being used.
4. Make available for public comment DOE and EPA evaluations of how drums could be characterized for more than six months using an uncertified process and what measures DOE and EPA will take to prevent the recurrence of such a situation in the future. EPA should evaluate both procedural and rulemaking changes to address the situation.

Thank you for your careful consideration of these comments.

Sincerely,

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