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August 13, 2001

Docket No. A-98-49, Air Docket
 Room M-1500 (LE-131)
 U.S. Environmental Protection Agency
 401 M Street, SW
 Washington, DC 20460

VIA FAX (202) 565-2062

RE: 66 Federal Register 36723

Dear People:

Southwest Research and Information Center (SRIC) submits the following comments related to EPA's Federal Register notice of July 13, 2001 regarding the "Waste Characterization Program" at the Idaho National Engineering and Environmental Laboratory (INEEL).

EPA has ignored public comment regarding the comment period

On August 3, 2001, EPA received a request from six New Mexico groups, representing more than 10,000 people, for a 30-day extension of the public comment period (Docket Item II-A3-27). This is an unprecedented request in that those groups, nor any other equivalent numbers of people, have ever make such a request since the issuance of 40 CFR 194.8 on May 18, 1998. Despite the unprecedented numbers of people involved in the request and the importance of the request, EPA denied the request in a letter faxed on August 10, 2001.

EPA's denial action shows a marked contempt for the public. As a result, none of those groups has been provided a reasonable opportunity to comment on the notice and none of the others are able to make any further comment. The agency has provided no reasonable basis for its extraordinary action in denying the request. To provide an adequate public comment period, as was requested, is clearly in the public interest. EPA's rejection of the request shows contempt for the public and the appearance of having made its decision without awaiting public comment.

SRIC strongly objects to EPA's denial and again requests a 30-day extension of the comment period. Because of the inadequate comment period, SRIC has not had an opportunity to fully review and comment on the documentation described in the EPA notice. Accordingly, these comments are incomplete and do not represent the full range of issues or depth of comment that would be provided if the requested or required public comment periods were given. SRIC strongly protests this unwarranted and unnecessary violation of public participation procedures.

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EPA's rejection letter changes EPA rules without public notice or comment.

In its rejection letter EPA also declines to provide additional documentation to the public, as requested by the six citizen groups. The rejection letter states that EPA's waste characterization inspections involve many different documents and interviews, which "are then summarized and made public in our inspection reports." at 2. To the contrary, EPA's certification decision states: "The EPA places all information used to support its proposed and final decisions in the docket, which is available for review by the public." (emphasis added).

Thus, EPA is apparently changing the basis for its approval. It is inappropriate and unnecessary for EPA to change its procedures and rulemaking requirements without public notice and comment, as provided in the Administrative Procedure Act.

In its rejection letter, EPA also states that the public comment period is "intended to provide the public with the opportunity to present concerns and questions that they would like EPA to consider in making a compliance decision." at 1. However, 40 CFR 194.8(a)(2) and (b)(2) place no such limitations on the nature and scope of public comment.

It is inappropriate and unnecessary for EPA to change its rulemaking requirements without public notice and comment, as provided in the Administrative Procedure Act.

EPA is not complying with 40 CFR 194.8

The Federal Register notice cites 40 CFR 194.8 as the basis for placing documentation on the INEEL waste characterization program in the docket. 66 Fed. Reg. 36724, c.2. 40 CFR 194.8(b)(2) requires: "[a] public comment period of at least 30 days" on the documentation "placed in the dockets described in 194.67." That subsection requires EPA dockets in both Washington, DC and New Mexico. In explaining those requirements, EPA stated: "The requisite plans and other appropriate inspection or audit documentation will be placed in the docket, and the public will be allowed the opportunity to submit written comments. A comment period of at least 30 days will be provided." 63 Fed. Reg. 27402.

EPA is not complying with that requirement in several respects.

1. The DOE waste characterization documents provided to the dockets in accordance with the Federal Register notice are contained in item II-A2-31. That item was received in the Albuquerque docket at the Government Publications Department at the University of New Mexico General Library on July 17, 2001. A 30-day comment period would run until August 17, not August 13, which is the deadline set in the EPA notice. If EPA were complying with its own regulations regarding those documents, the public comment period would run until at least August 17.

2. One of the documents specifically cited in the EPA notice is EPA's report on its preliminary inspection of INEEL, conducted on July 2-3, 2001, which "has been placed" in the docket. 66 Fed. Reg. 36724, c.3. However, that document's cover letter is dated July 20, 2001, it was not sent to the docket until July 26, and it was not received in the Albuquerque docket until August

6. Item II-A1-28. So the EPA notice was inaccurate both because on July 9 (when the notice is dated) the report did not exist, and because it is not being made available for public comment for 30 days. If EPA were complying with its own regulations regarding that document, the public comment period would run until at least September 6.

3. In its notice, EPA states that comments "must be received by EPA's official Air Docket on or before August 13, 2001." 66 Fed. Reg. 36724, c.1. The notice provides only a mailing address for the Air Docket, no fax number or email address. Thus, to comply with EPA's deadline, the public would have to mail comments by no later than Saturday, August 11, less than 30 days from July 13.

In this matter, and all future public comment periods, EPA must provide at least an actual 30 days for public comments. It should also provide an email address and fax numbers for submission of public comments.

This entire matter arose because INEEL and the Department of Energy (DOE) Carlsbad Field Office (CBFO) were rushing to accelerate waste shipments to WIPP and did not comply with the requirements of EPA's certification of WIPP, as EPA itself stated in its July 20 report. at 11-13. EPA's actions in this matter when it is not complying with its own regulations provide a clear example as to why INEEL and CBFO also need not comply with EPA regulations and its WIPP certification. Just as DOE's noncompliance with the WIPP certification is unacceptable, so too are EPA's actions. Such practices endanger public health and safety as well as significantly undermining public confidence in EPA.

EPA should not certify the Waste Assay Gamma Spectrometer (WAGS) system.

1. The WAGS system does not comply with quality assurance requirements. 40 CFR 194.22(e) requires EPA to "verify appropriate execution of quality assurance programs through inspections, record reviews and record keeping requirements...." The docket includes a Quality Assurance Project Plan (QAPjP) for INEEL (6/4/01 revision) and a December 13, 2000 Memo regarding quality assurance for WAGS.

But the docket does not contain any QA inspection report since July 28-30, 1998 (Item II-A4-2). Thus, it appears that EPA has not been appropriately applying the inspection requirement to INEEL. Therefore, SRIC requests that EPA perform a QA inspection at INEEL, as also provided by 40 CFR 194.8(a)(4). Such an inspection must be conducted before the WAGS system is certified.

The QAPjP does not include specific requirements for WAGS, nor QA procedures for gamma assay. In the absence of written QA requirements, EPA cannot conclude that WAGS cannot comply with QA requirements. Certainly the fact that WAGS was used for six months without being certified by CBFO and EPA indicates that QA requirements are inadequate, that QA requirements for WAGS are inadequate, or both.

Thus, based on the documents in the docket, SRIC cannot conclude that the WAGS system complies with the quality assurance requirements of 40 CFR 194.22 or 194.8.

2. The WAGS system does not comply with waste characterization requirements.

Based on the documents in the docket, SRIC 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.

Clearly, the waste characterization program was not functioning properly when it allowed uncertified equipment to be used on hundreds of drums, which were then shipped to WIPP. Such actions were not in compliance with provisions of the WIPP certification, including condition 3, 40 CFR 194.24, 40 CFR 194.8, and 40 CFR 194.4.

EPA cannot now make a determination that the 800 drums should be disposed at WIPP.

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 EPA letter of July 9, 2001 to DOE clearly states that EPA has 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."

Information in the docket regarding those drums is contained in Item II-A1-28, and especially the references to that inspection report. As previously noted, that document was not sent to the docket until July 26 and was not received at the Albuquerque docket until August 6. Thus, SRIC has had less than 7 days to review that document. While SRIC was promised that it would receive the inspection report, it was not received until August 2, and then only an interim report (not the final version) via email, with no references. A complete version of the report, but without references, was received on August 3, even though the references had also been promised by EPA. Thus, SRIC has had a wholly inadequate amount of time to review the report and its references.

However, even a cursory review identifies several problems. The inspection report states that a total of 2,732 drum counts were performed using the WAGS system between December 1, 2000 and June 29, 2001. at 9. Reference 1B contains a list of 725 drums assayed with the WAGS system between December 19, 2000 and June 15, 2001. Apparently, there were hundreds of other drums assayed with the WAGS system for which no documentation is provided in the docket. Among the questions that must be answered is what happened with the other drums, whether some of the drums were rejected and for what reasons, whether there were occurrences in which the WAGS system or its operators and personnel did not operate properly.

If that information is correct, INEEL was already beginning to use the WAGS system for assay before EPA's waste characterization inspection of December 5-7, 2000. Item II-A4-15. According to that inspection report one of the INEEL drums examined during the inspection was IDRF741205311. at 8. One of the drums listed as being assayed by the WAGS system and shipped to WIPP is IDRF741205310. See Reference 1B at 16. SRIC believes that there should be a specific investigation of those two drums to determine whether both were assayed by the WAGS system, and whether that fact was overlooked during the December 2000 inspection, and whether those two drums have been accurately described in the documentation that has been provided to EPA.

At page 3, the inspection report states that in this case the EPA inspection was to determine whether an approved waste stream, S3000 for homogenous solid waste generated at Rocky Flats, was being correctly characterized. However, the WAGS system was being used on legacy debris waste S5000, not just on homogeneous solids from Rocky Flats. EPA must explain this error in the report, since homogeneous solids were not approved for shipment by either EPA or the New Mexico Environment Department until late April 2001.

Based on the documents in the docket, the training procedures and their effectiveness for operators of the WAGS system was not reviewed, even though there are differences from those of the approved SWEPP Gamma-Ray Spectrometer (SGRS) system.

Based on the information in the docket, EPA cannot make a final determination about the status of the drums from INEEL that are being held on the surface at WIPP or the drums that have been emplaced underground. SRIC requests that EPA extend the public comment period on this matter, and provide the additional documentation that was requested by the six New Mexico groups on August 3 prior to making any decision.

Thank you for your careful consideration of all of these comments.

Sincerely,



Don Hancock

cc: Senator Jeff Bingaman
Senator Pete Domenici