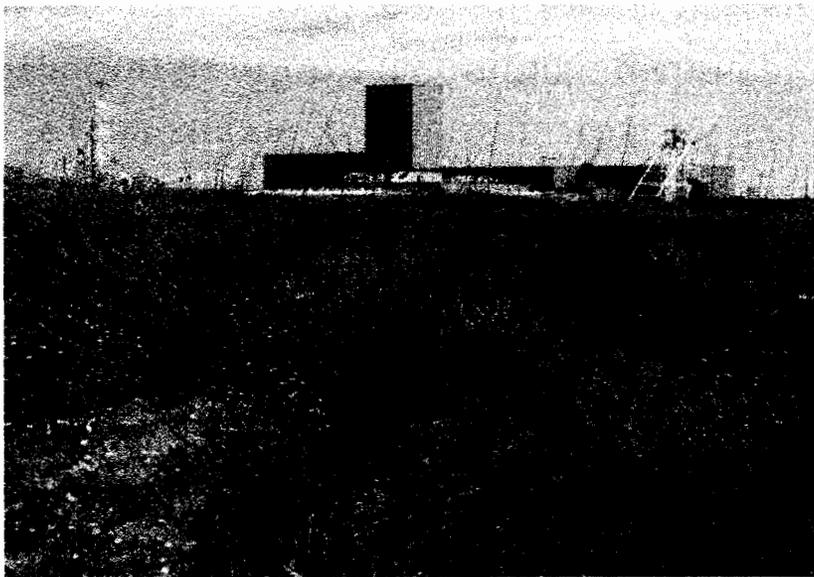


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# WIPP Panel Closure Redesign Rulemaking



Fall 2012



## Overview

- Condition 1 of EPA's original certification of WIPP requires DOE to implement the Option D Panel Closure.
- The approval of any changes to the panel closure condition will be conducted via the Agency's rulemaking process.
- EPA's technical review of DOE's planned change began in 2011, and is ongoing.
- EPA's next step is to determine that DOE has provided adequate information to inform a complete technical review. Gathering input from the public is a significant part of this process.
- EPA anticipates proposing a rule modifying its panel closure condition in spring 2013, with a goal of finalizing the rule by the end of the calendar year.



## Condition 1:

- In the 1996 CCA, DOE presented four options for the design of the panel closure system, but did not specify which one would be constructed at the WIPP.
- In the absence of data on waste contents and disposal system performance, EPA based its certification decision on DOE's use of the most physically robust design.
- 40 CFR Part 194, Appendix A, Condition 1 (*Federal Register*, Vol. 63 No.95, p.27355) requires DOE to implement the Option D panel closure system at WIPP, with Salado mass concrete replacing fresh water concrete.
- The Agency determined that the use of Salado mass concrete – using brine rather than fresh water – would produce concrete seal permeabilities in the repository more consistent with the values used in DOE's performance assessment.



## Changes to Condition 1:

EPA's certification specifically addressed potential future changes to the panel closure design:

- "Nothing in this condition precludes DOE from reassessing the engineering of the panel seals at any time.
- "Should DOE determine at any time that improvements in materials or construction techniques warrant changes to the panel seal design, DOE must inform EPA.
- "If EPA concurs, and determines that such changes constitute a significant departure from the design on which certification is based, the Agency is authorized under §194.65 to initiate a rulemaking to appropriately modify the certification."

- *Federal Register*, Vol. 63 No.95, p.27362



## Panel Closure Rulemaking Action Required by 40 CFR 194.65

- Action was commenced April 19, 2012 in anticipation of complete technical documentation from DOE.
- Designated as lowest level (Tier 3) regulatory action, not subject to White House OMB review.
- Regulatory process will include:
  - **Proposed regulatory modification to 40 CFR 194 panel closure requirement (Condition 1)**
  - **Public comment period with a public hearing if requested**
  - **A final regulation that modifies 40 CFR 194**
- Regulation is subject to judicial review.
  - U.S. Court of Appeals for the Tenth Circuit or for the District of Columbia
  - 60 days after final agency action (LWA, Sec. 18)

## What has EPA done so far?

- The Panel Closure Redesign Planned Change Request (PCR) was received September 28, 2011.
- EPA initiated its technical review and correspondence with DOE.
- DOE agreed to conduct the Panel Closure System Performance Assessment (PCS-2012 PA), with the explicit goals of:
  - **Modeling the panel closure using parameters agreed upon by EPA and DOE (DOE memorandum, dated June 15, 2012)**
  - **Quantifying the predicted impacts of changing the panel closure on long-term repository performance**
  - **Allowing a direct comparison to the current baseline PA for certification (the PABC-09)**
- EPA received the PCS-2012 PA summary report on November 5, 2012.
- EPA's technical review is ongoing.





## Rulemaking Milestones

- EPA technical staff will determine the completeness of DOE's request.
  - **Determine that DOE has provided EPA has sufficient information to review and support a decision**
  - **Incorporate public comments, correspondence with DOE**
- EPA staff will finish and document its technical review.
- Agency work group will develop proposed regulatory language.
- Draft Rule Revision to be proposed via publication in the Federal Register, Spring 2013.
- Proposal will open a 60-day public comment period.
- EPA's goal is to publish Final Rule and Response to Comments by the end of 2013.