



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

WIPP file



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OFFICE OF
AIR AND RADIATION

Mr. George Dials
Manager
Carlsbad Area Office
U.S. Department of Energy
P.O. Box 3090
Carlsbad, NM 88221-3090

Dear Mr Dials:

Thank you for your timely submission of the first Waste Isolation Pilot Plant Biennial Environmental Compliance Report (BECR). Since this was your first submission we have carefully reviewed the document to see if it was complete. Because the LWA does not specify in detail the contents of DOE's biennial report, this letter provides detailed specification of what information the biennial reports should include in order to enable the Administrator to determine compliance under section 9(a)(3) of the LWA. During the preparation of the BECR Environmental Protection Agency (EPA) regional staff worked with DOE staff to develop the form and content of the BECR. The regional staff has informed me that additional guidance needs to be provided to ensure that the BECR is complete.

The BECR should include documentation of compliance with all Federal laws pertaining to public health and safety or the environment applicable to WIPP and with all regulations promulgated and all permit requirements under those laws. This means the report should include documentation regarding all laws administered by Federal agencies. The report should not be limited to laws administered by EPA. Of course, EPA recognizes that the amount of information needed for this report may be less than for future reports if the WIPP is certified to dispose of transuranic waste.

For laws and regulations administered by EPA, including subpart A of 40 CFR Part 191, the Clean Air Act, the Solid Waste Disposal Act, the Safe Drinking Water Act, the Toxic Substances Control Act, and the Comprehensive Emergency Response, Compensation, and Liability Act, DOE should submit sufficient information and documentation for EPA to evaluate WIPP's compliance with those laws. This means DOE should submit whatever information (technical reports, monitoring data, etc.) is required under the normal recordkeeping and reporting provisions of EPA's existing implementation program for these laws.



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For laws and regulations applicable to WIPP that are administered by other Federal agencies, such as the Department of the Interior, the Nuclear Regulatory Commission, and the Department of Transportation, DOE should submit verification from the appropriate agency that WIPP is in compliance with the applicable law administered by that agency. DOE should also submit in its biennial report a description of the information DOE submitted to the agency for the agency's determination of compliance. DOE has submitted information that discusses the WIPP's compliance with these laws but without verification from the implementing Agency, EPA cannot know whether DOE is, in fact, in compliance with the information provided.

In future reports DOE should remember that the Waste Isolation Pilot Plant Land Withdrawal Act (LWA) is itself an applicable Federal law pertaining to public health and safety or the environment, and, therefore, DOE should include in the BECR documentation of compliance with LWA requirements. Among the requirements that will apply should the WIPP become an operating disposal facility is the waste limitations of section 7 of the LWA and the ban on high level waste and spent nuclear fuel in section 12.

In order to properly perform its role under the LWA, EPA needs the proper information. The present BECR does not contain all the necessary information as such it is incomplete and EPA is suspending its review.

I appreciate your efforts and the efforts of your staff to provide us with the information we need. The BECR you submitted represents a very good first step. Please contact Chuck Byrum at (214) 655-7555 or myself at (202) 233-9290 for any additional information about the contents of the BECR.

Sincerely,



Larry Weinstock
Acting Director
Criteria and Standards Division