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To	Steve Zappe	From	Don Hancock		
Co./Dept.		Co.			
Phone #		Phone #	262-1862		
Fax #	827-4389	Fax #	262-1864		

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WIPP File

April 18, 1995

Larry Weinstock, Acting Director  
 Criteria and Standards Division  
 Office of Air and Radiation  
 U.S. Environmental Protection Agency  
 401 M St., S.W.  
 Washington, D.C. 20460

VIA FAX (202) 233-9629

Dear Larry,

This letter is a followup to our telephone conversation of yesterday regarding EPA's plans for the comment period on the proposed compliance criteria (40 CFR 194), consideration of DOE's draft application, and EPA's compliance application guidance (CAG). I want to clarify my understanding of EPA's current plans and how they will be publicly announced. I also have additional questions about EPA's plans.

1. Comment period on the proposed compliance criteria.

You stated that the comment period will not now be formally extended beyond May 1. However, EPA will re-open the comment period for an additional 60 days during the summer once DOE submits the second part of the draft application.

As you know, SRIC, and other organizations, have requested an extension of the comment period, so we hope that is what EPA is now doing. However, several questions arise:

1. Will EPA re-open the comment period, regardless of whether DOE submits any additions to its draft application? Will EPA re-open the comment period whether or not it reviews the draft application? SRIC believes that EPA should extend or re-open the comment period, regardless of DOE's future actions.
2. Will EPA fully consider all comments received after May 1 and before the beginning of the 60-day additional comment period? SRIC believes it would be unlawful to not fully consider comments received between the two comment periods.
3. How and when will EPA notice the public as to its intention to reopen the comment period? SRIC believes EPA's intent should be noticed, including by letter, mention on the EPA WIPP 800 line, press release, and in the Federal Register as soon as possible, and previous to the May 1 deadline.

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## 2. EPA's consideration of the draft application

You stated that EPA has decided not to issue a completeness determination on the draft application. Other aspects of EPA's review of the draft application have not been finally determined, but EPA will issue a public notice and provide a public comment opportunity on the draft application. EPA also intends to submit two sets of comments to DOE on the draft application, as outlined in your one-page summary, which was faxed to me on March 24. Again, several questions arise:

1. Will EPA begin consideration of the draft application submitted by DOE on March 31 before the second submission is received? SRIC believes it is unlawful for EPA to consider any compliance application until the compliance criteria are final.
2. Has EPA established a docket for the draft application? If so, what is the docket number? If not, does EPA intend to do so? When?
3. Will EPA issue a public notice and provide for a public comment opportunity if DOE does not provide the second submission?
4. Will EPA allow public comment on its proposed comments to DOE before they are sent to DOE?

## 3. EPA's draft CAG

You stated that no additional decisions have been made about the CAG. Thus, I assume that the process outlined in your March 21 letter to stakeholders is still in effect. Additional questions are:

1. Has EPA rejected SRIC's request of April 4 that the CAG be re-noticed for public comment and that the CAG be made part of the compliance criteria rulemaking?
2. Has EPA established a docket for the CAG? If so, what is the docket number? If not, does EPA intend to do so? When?
3. Is it EPA's intent that the CAG will contain nothing that is required to be in the compliance criteria, under Section 8(c)(2) of the WIPP Land Withdrawal Act, and that the CAG will be non-binding guidance to DOE?

Thank you for your early clarification of these matters.

Sincerely,



Don Hancock

cc: Mary Nichols  
Ramona Trovato  
Lindsay Lovejoy  
Bob Neill  
Chris Wentz  
Steve Zappe  
Kathy Sabo  
Garland Harris