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U.S. Environmental Protection Agency
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1200 Pennsylvania Ave NW, Mail Code 6608T
Washington, DC 20460

Subject: Recommended Schedule for Future Compliance Recertification
Application Submittals

Dear Ms. Veal:

The purpose of this letter is to request the U.S. Environmental Protection Agency's (EPA) concurrence with the U.S. Department of Energy (DOE) plan to submit the recurring Compliance Recertification Application (CRA) five years after the date of the most recent completeness determination as published in the Federal Register. This would be in lieu of submitting each CRA using the first receipt of waste as the reference point for the submission schedule.

On March 29, 1996, the EPA issued the Compliance Application Guidance (CAG) as a companion to the criteria published at 61 FR 5224, February 9, 1996, *Criteria for the Certification and Re-Certification of the Waste Isolation Pilot Plant's (WIPP) Compliance with the 40 Code of Federal Regulation (CFR) Part 191 Disposal Regulations*. The CAG discussed 40 CFR §194.15, *Content of Compliance Recertification Application(s)*, stating "Section 8(f) of the WIPP Land Withdrawal Act (LWA) requires DOE to submit documentation of continued compliance with 40 CFR Part 191 every five years after the emplacement of waste begins, if the initial certification is granted, and until completion of the decommissioning phase." Further, the CAG states, "EPA expects the documentation to include any new information related to the disposal system that was obtained during the five-year period after the emplacement of waste began, or since the time of the most recent recertification".

More recently issued guidance to the *U.S. Department of Energy on Preparation for Recertification of the Waste Isolation Pilot Plant with 40 CFR Parts 191 and 194*, stated, "For subsequent recertifications, we recommend that you use March 1999 (i.e., the date of initial waste receipt) as the reference point for calculating the 5-year recertification schedule, rather than the date of EPA's previous recertification determination. This approach provides a fixed starting point for the schedule." This guidance was transmitted from Frank Marcinowski, Acting Director, Radiation Protection Division, to

Ines Triay, Manager Carlsbad Field Office U.S. Department of Energy on December 20, 2000.

Both guidance documents suggest that the EPA has some flexibility in determining the CRA submission schedule.

The December 20, 2000, guidance document also anticipated the first recertification decision occurring within five years (i.e., 2004), provided that a complete CRA was submitted to the EPA and that the DOE continued to demonstrate compliance with the final disposal regulations.

Although the DOE submitted the first CRA in March 2004, the actual EPA recertification occurred in early 2006. To date, the DOE has followed the schedule described in the WIPP Land Withdrawal Act (Public Law 102-579, as amended by Public Law 104-201) Section 8(f)(1), consistent with the recommendation in this guidance for each of the CRAs submitted to the EPA. However, the schedules associated with recertification cycles have become increasingly challenging due to the length of time required for processing.

Pursuant to 40 CFR §194.11, a CRA must be declared complete by the EPA before the commencement of the six-month decision period designated in Section 8(f)(2) of the WIPP Land Withdrawal Act. The Land Withdrawal Act does not, however, specify a time frame for the EPA's completeness determination. This process has historically proven to be very lengthy and has resulted in the DOE being placed in a position to begin performing analyses and drafting the next CRA shortly after the previous CRA has been approved by the EPA. Therefore, we recommend that updated EPA guidelines associated with the CRA submittal schedule is warranted.

In the December 20, 2000, letter transmitting the recertification guidance, the EPA recognized the combined efforts of the DOE and EPA are crucial to meet recertification deadlines. Although the DOE acknowledges the time necessary for the EPA to determine the completeness of, and reach a final recertification decision regarding, CRA submittals, the DOE also recognizes future CRA submittals must address the criteria in 40 CFR §194.15, including 40 CFR §194.15(a)(7) "areas of enhancement or improvement" as outlined in Compliance Application Review Documents (CARDs) and Technical Support Documents (TSDs). Additionally, enough time must be allotted for longer-term DOE scientific experiments and analyses that could strengthen the WIPP technical basis in a CRA.

Pursuant to the CAG indicating the recertification cycle can be based on the completeness determination date and the increasing schedule challenges described herein, the DOE intends to adopt, with EPA's concurrence, a five-year time frame between CRAs that begins with the EPA's determination of completeness for the DOE's previous CRA.

The DOE has identified multiple benefits to both the DOE and EPA that would result from making this change, including the following:

1. Allowing five years between a completeness determination and the next CRA submission would enable the DOE to more fully address the regulatory criteria in 40 CFR 194.15 before the CRA data-cutoff occurs.
2. Five years from a completeness determination is consistent with the WIPP LWA Section 8(f)(1) time frame and allows time for performing scientific experiments, data gathering, and analyses needed to make any required adjustments to Performance Assessment (PA) parameters, uncertainty distributions, or the models used to evaluate the long-term performance of the repository. The current shortened interval between the EPA recertification decision and the DOE's subsequent CRA makes it exceedingly difficult to incorporate updates in successive recertification processes, considering the time it takes to perform scientific experiments and ensure the results comply with the National Quality Assurance and DOE Quality Assurance requirements.
3. Five years from a completeness determination, also provides the DOE a more reasonable time frame to address EPA's requests for additional information during the completeness determination of the CRA. The time the DOE has had for performing scientific experiments and analyses before the data cutoff for CRA-2019 and CRA-2024 has been limited to six and eight months, respectively.
4. The overall DOE and EPA priorities/efforts for recertification could shift to be more focused on scientific experimental activities rather than on document preparation and review. Preparation of the CRA documents by DOE requires roughly 15 months and involves approximately 50 personnel (scientific, regulatory, technical editing, administrative and management). The EPA invests similar resources in reviewing the CRAs and conducting necessary administrative processes, including public notices.
5. The additional time gained between reviews can be redirected to scientific exchanges and other regulatory oversight and dialogue. For example, the proposed schedule change provides EPA time needed to evaluate and process Planned Change Requests and Notices, which support completing Generator site compliance agreements, state agreements, and clean up goals by ensuring uninterrupted defense TRU waste disposal during the operational period.
6. The proposed schedule change also provides adequate time between each recertification for public participation and transparency.

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As noted the preparation time between the completeness determination and the next CRA data cutoff date has been condensed to less than one year for both the CRA-2019 and the CRA-2024 submission cycles. The 15 months required for preparation and the consistently diminishing time between recertification and the next cycle submission date results in substantially limiting the time that can be allocated for the scientific experiments and analysis for a CRA. Thus, DOE is requesting the EPA's concurrence with this planned timeline for CRA submittals.

If you have any questions, please contact Michael Gerle at (575) 988-5372.

Sincerely,

Mark Bollinger
Acting Manager
Carlsbad Field Office

cc:

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