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

JUN 29 2010

OFFICE OF
AIR AND RADIATION

Honorable Dr. Steven Chu
Secretary
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Dear Mr. Secretary:

Pursuant to Section 8(f) of the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act, as amended, and in accordance with the WIPP Compliance Criteria at 40 CFR § 194.11, I hereby notify you that the U.S. Environmental Protection Agency (EPA or "the Agency") has determined that the U.S. Department of Energy's (DOE) 2009 Compliance Recertification Application (CRA) for WIPP is complete. This completeness determination is an administrative determination required under the WIPP Compliance Criteria, which implement the Agency's Final Radioactive Waste Disposal Regulations at Subparts B and C of 40 CFR Part 191. While the completeness determination initiates the six-month evaluation period provided in Section 8(f)(2) of the Land Withdrawal Act, it does not have any generally applicable legal effect. Further, this determination does not imply or indicate that DOE's CRA demonstrates compliance with the Compliance Criteria or the Disposal Regulations.

Section 8(f) of the amended Land Withdrawal Act requires EPA to evaluate all changes in conditions or activities at WIPP every five years to determine if the facility continues to comply with EPA's disposal regulations. This second recertification process includes a review of all changes made at the WIPP facility since the initial 2004 CRA (and subsequent recertification decision, issued in 2006) was submitted by DOE.

Under the applicable regulations, EPA may recertify the WIPP only after DOE has submitted a "full" (or complete) application (see 40 C.F.R. § 194.11). Upon receipt of the CRA on March 24, 2009, EPA immediately began its review to determine whether the application was complete. Shortly thereafter, the Agency began to identify areas of the 2009 CRA that required supplementary information and analyses. In addition, EPA received public comments and held public meetings on the application that identified areas where additional information was needed for EPA's review.

EPA identified completeness concerns in a series of letters and e-mails from the Agency to Dr. Dave Moody, Manager for DOE's Carlsbad Field Office, as well as his staff. This correspondence is detailed below:

- **May 21, 2009** – EPA requested additional information on the performance assessment and chemical portions of the CRA-2009.
- **July 16, 2009** – EPA requested additional information on waste inventory, performance assessment calculations/code documentation, human intrusion, and chemistry (including karst comments raised by stakeholders).
- **October 19, 2009** – EPA requested additional information on waste inventory, chemistry, features/events/processes (FEPs), and performance assessment paramaters/codes.
- **January 25, 2010** (addendum to 5/21/09 letter via e-mail)– EPA requested additional information conceptual models and modeling calculations.
- **February 19, 2010** – EPA requested additional information on repository chemistry issues.

DOE submitted the requested information with a series of ten letters, which were sent on the following dates:

- August 24, 2009
- September 30, 2009
- November 25, 2009
- January 12, 2010
- February 22, 2010
- March 31, 2010
- April 12, 2010
- April 19, 2010
- May 26, 2010
- June 24, 2010

All completeness-related correspondence was placed in our public docket (EDOCKET EPA-HQ-OAR-2009-0330) and on our website (http://www.epa.gov/radiation/wipp).

Based on the information provided by DOE, we conclude that the 2009 CRA is complete. Again, this is the initial, administrative step that indicates DOE has provided information relevant to each applicable provision of the WIPP Compliance Criteria and in sufficient detail for us to proceed with a full technical evaluation of the adequacy of the application. In accordance with Section 8(f)(2) of the amended Land Withdrawal Act, EPA will make its final recertification decision within six months of this letter.

To the extent possible, the Agency began conducting a preliminary technical review of the application upon its submittal by DOE, and has provided the Department with relevant technical comments on an ongoing basis. EPA will continue to conduct its technical review of the 2009 CRA as needed, and will convey further requests for additional information and analyses. The Agency will issue its compliance recertification decision, in accordance with 40 CFR Part 194 and Part 191, Subparts B and C, after it has thoroughly evaluated the complete CRA and considered relevant public comments. The public comment period on our

completeness determination will remain open for 30 days following the publication of this letter in the Federal Register.

Thank you for your cooperation during our review process. Should your staff have any questions regarding this request, they may contact Tom Peake at (202) 343-9765 or by e-mail at <peake.tom@epa.gov>.

Sincerely,

Michael P. Flynn, Director
Office of Radiation and Indoor Air

cc: Jonathan Edwards, EPA
Alan Perrin, EPA
Tom Peake, EPA
Frank Marcinowski, DOE/HQ
Christine Gelles, DOE/HQ
Alton Harris, DOE/HQ
Dave Moody, DOE/CBFO
Russ Patterson, DOE/CBFO
Steve Zappe, NMED

bcc: WIPP Team