



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

November 15, 2002

OFFICE OF
AIR AND RADIATION

Dr. Inés R. Triay, Manager
Carlsbad Field Office
U.S. Department of Energy
P.O. Box 3090
Carlsbad, NM 99221-3090

COPY

Dear Dr. Triay:

Thank you for your letter dated October 7, 2002, requesting that the Environmental Protection Agency (EPA) approve a proposed change to the 40 CFR Part 194 Certification of the Waste Isolation Pilot Plan (WIPP) with regard to the required panel closure system.

Approval of the proposed change to the required panel closure system would require EPA to conduct a modification rulemaking in accordance with 40 CFR 194.65, which requires such a rulemaking for any changes in activities or conditions pertaining to the WIPP disposal system that depart significantly from the information and materials on which the current certification is based. Condition 1 of EPA's certification decision [40 CFR 194, Appendix A] specifies that the Department of Energy (DOE) must install panel closures that conform to design Option D described in the Compliance Certification Application. Departing from the approved design, as proposed in your letter, would require changing Condition 1 of the WIPP Certification decision. This would constitute a significant deviation and thus require a modification.

A modification rulemaking will likely take a minimum of 12 months to complete from receipt of "complete" information on the requested change. It is our intention to refrain from conducting modification rulemakings during the period in which, by statute, we are required to consider the WIPP recertification application. Since the rulemaking likely would not be completed before we receive the WIPP compliance recertification application (expected to be submitted to EPA in November 2003), we are deferring review of this proposal until after we have issued our recertification decision. We notified you of our intent in this regard in our December 2000 Recertification Guidance to DOE and again in letters to you dated April 24, 2002, and August 6, 2002. Between now and November 2003, we will continue to work with the Carlsbad Field Office on significant WIPP recertification issues.

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Without EPA's approval of the change to the panel closure design system, DOE should ensure that Condition 1 of the WIPP Certification Decision is reflected in the WIPP compliance recertification application.

If you have any questions please call Betsy Forinash at (202) 564-9310.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Marcinowski". The signature is written in a cursive style with a large initial "F".

Frank Marcinowski, Director
Radiation Protection Division

cc: Lynne Smith, DOE/HQ
Cindy Zvonar, DOE/CBFO
Russ Patterson, DOE/CBFO
Matthew Silva, EEG
Steve Zappe, NMED