



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

APR _ 2 2018

OFFICE OF
AIR AND RADIATION

Mr. Rick Lee, Chairman
Governor's Nuclear Advisory Council
1200 Senate Street
460 Wade Hampton Building
Columbia, South Carolina 29201

Dear Mr. Lee,

Thank you for your letter of February 22, 2018 to Environmental Protection Agency Administrator Scott Pruitt regarding the Department of Energy's (DOE) intention to use the Waste Isolation Pilot Plant (WIPP) for the disposal of plutonium currently intended for conversion to mixed oxide (MOX) fuel. I am responding for the Administrator.

You raise several issues in your letter, including concerns about a possible "dilute and dispose" method that a DOE representative discussed with the Governor's Nuclear Advisory Council. I will address your issues generally in this response.

It is our understanding that Congress has directed the DOE to study the viability of the dilute and dispose process as a potential approach for the disposal of 34 metric tons (MT) of plutonium identified through the Plutonium Management and Disposition Agreement between the United States and Russia. The EPA is not aware of any other Congressional decision or definitive DOE action that would indicate that a final decision has been made to use a "dilute and dispose" approach for the 34 MT of plutonium.

There would be many steps and some time before the EPA formally becomes involved in exercising its regulatory responsibilities associated with the possible disposal of the 34 MT of plutonium at the WIPP. This includes the National Environmental Policy Act activities that the DOE would be required to do, in addition to the separate studies directed by Congress. As these different studies and analyses would be expected to take many years, it is premature for the EPA to address the issue of the disposal at WIPP of the 34 MT of plutonium.

You note that the EPA recently recertified that the WIPP is in compliance with the final disposal regulations at 40 CFR Part 191 and express the view that the DOE's March 2014 Compliance Recertification Application (CRA) did not fully address a number of issues related to the potential disposal of an additional 6 MT of surplus non-pit plutonium (which is separate from the 34 MT of plutonium currently intended for conversion to MOX fuel). At the time of the March 2014 CRA, the DOE had not completed the process (e.g., the Environmental Impact Statement) necessary for the DOE to include the material in the WIPP waste inventory.

Under the Land Withdrawal Act, the DOE is required to submit to the EPA, every 5 years, documentation of the WIPP's continued compliance with the EPA's final disposal regulations at 40 CFR

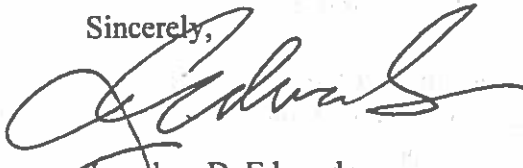
Part 191. See Pub. Law 102-579, Section 8(f) (Oct. 30, 1992). Based on the DOE's submission, the EPA then determines whether the DOE continues to be in compliance with those regulations. *Id.* Each CRA addresses changes and updated information from the period between the previous CRA and the new CRA. Because the final status of that material had not yet been determined, the DOE's March 2014 CRA did not address the 6 MT of surplus plutonium.

With the inclusion of the 6 MT of surplus plutonium in the 2016 WIPP inventory, the DOE determined that the surplus plutonium, after downblending, is defense related transuranic waste and is eligible for disposal at the WIPP. As a waste going to the WIPP, the DOE will need to appropriately incorporate the 6 MT of surplus plutonium in its CRA 2019 performance assessment and provide the EPA with the information necessary to evaluate its impacts on compliance with the applicable regulations. The EPA is working with the DOE to determine how the 6 MT and other issues will be addressed in the 2019 CRA.

I appreciate your bringing your concerns to the EPA's attention, and I want to assure you that the EPA will continue to fulfill its regulatory responsibilities relating to the WIPP. If you have any follow-up questions on this matter, please contact Lee Ann B. Veal, Director of the Radiation Protection Division, at veal.lee@epa.gov or 202-343-9448.

Again, thank you for your letter. I appreciate the opportunity to be of service and trust the information provided is helpful.

Sincerely,



Jonathan D. Edwards
Director
Office of Radiation and Indoor Air

cc: Lee Ann B. Veal, EPA/ORIA
Tom Peake, EPA/ORIA
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