

required for ROP, and therefore, any surplus emission reductions can be considered as early implementation of contingency measures. Surplus emission reductions associated control measures that are either not required in the nonattainment area by the Act, nor are Federal measures may be used for contingency purposes. Maryland has adopted two such measures (controls on open burning and the National Low Emissions Vehicle program), which are available for consideration as the early implementation of contingency measures. Pursuant to EPA guidance, the requirements of the Act with regard to providing contingency measures should the area fail to achieve ROP, have been satisfied in the Cecil County portion of the Philadelphia area.

EPA's review of Maryland's SIP revisions indicates that the post 1996 ROP requirements of the Act have been met for the Cecil County portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area. EPA is proposing to approve the post 1996 ROP plans for Cecil County for milestone years 1999, 2002, and 2005 that were submitted on December 24, 1997, as revised on April 24 and August 18, 1998, December 21, 1999 and December 28, 2000. EPA is soliciting public comments on its proposal to approve these post 1996 ROP plans, corrections to the base year inventories and the contingency measures as discussed in this document. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

#### V. Proposed Action

EPA is proposing to approve the post 1996 ROP plans for milestone years 1999, 2002 and 2005 for the Cecil County portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area submitted on December 24, 1997, as revised on April 24 and August 18, 1998, December 21, 1999 and December 28, 2000. EPA is also proposing to approve corrections to the 1990 base year emissions inventories for Cecil County, submitted on December 24, 1997. EPA is also proposing to approve the contingency plans for failure to meet ROP for Cecil County, submitted in conjunction with the ROP demonstrations.

#### VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to

review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule to approve the post 1996 ROP plans for the Cecil County, Maryland portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 5, 2001.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 194

[FRL-7012-2]

RIN 2060-AG85

### Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Idaho National Engineering and Environmental Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability; opening of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA, or "we") is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents on waste characterization programs applicable to certain transuranic (TRU) radioactive waste at the Idaho National Engineering and Environmental Laboratory (INEEL)

proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are procedures and other materials related to the Waste Assay Gamma Spectrometer (WAGS) system, which INEEL proposes to use for radioassay of transuranic (TRU) radioactive waste. The documents are available for review in the public dockets listed in **ADDRESSES**. We will use these documents to evaluate the WAGS system during an inspection conducted in accordance with EPA's WIPP Compliance Criteria in July 2001. The purpose of the inspection is to verify that the proposed new system at INEEL can characterize transuranic solid waste properly, consistent with the WIPP Compliance Criteria and Condition 3 of EPA's final certification decision for the WIPP.

**DATES:** The EPA is requesting public comment on these documents. Comments must be received by EPA's official Air Docket on or before August 13, 2001.

**ADDRESSES:** Comments should be submitted to: Docket No. A-98-49, Air Docket, Room M-1500 (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

DOE documents related to the WAGS system are available for review in the official EPA Air Docket in Washington, DC, Docket No. A-98-49, Category II-A-2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 am–9 pm, Friday–Saturday, 10 am–6 pm, and Sunday, 1 pm–5 pm; in Albuquerque at the Government Publications Department, General Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 am–5 pm.

Copies of items in the docket may be requested by writing to Docket A-98-49 at the address provided above, or by calling (202) 260-7548. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, a reasonable fee may be charged for photocopying.

**FOR FURTHER INFORMATION CONTACT:** Scott Monroe, Office of Radiation and Indoor Air, (202) 564-9310, or call EPA's 24-hour, toll-free WIPP Information Line, 1-800-331-WIPP, or visit our website at <http://www.epa.gov/radiation/wipp/announce.html>.

**SUPPLEMENTARY INFORMATION:** The DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the

WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102-579), as amended (Pub. L. 104-201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Most TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and organic and inorganic sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision states that the WIPP will comply with the EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes a condition that prohibits shipment of TRU waste for disposal at WIPP from any site other than LANL until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.24(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision making process, DOE is required to submit to EPA relevant documentation of waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to the WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and in informational dockets in the State of New Mexico, for public review and comment.

We initially approved certain waste characterization processes at INEEL following an inspection on July 28–30, 1998. Since December 2000, INEEL has been using a new radioassay system, called the SWEPP Waste Assay Gamma Spectrometer (WAGS) system, to complete measurements of the radioactive constituents of waste drums. EPA recently learned that drums characterized by the WAGS system were sent to the WIPP without EPA's approval. On June 27, 2001, we instructed DOE to suspend shipments from INEEL pending investigation by EPA inspectors. On July 2–3, 2001, we performed a preliminary test of the WAGS system and found that it appears to operate at a level comparable to an EPA-approved system. Consequently, there appears to be no risk to public safety or the environment from INEEL drums already placed in the mine. We also found that INEEL is taking proper actions to identify the cause of the error

and prevent recurrence. Therefore, we allowed DOE to resume shipment of INEEL waste not characterized by the WAGS. Information related to this action, including EPA's report of the preliminary inspection, has been placed in Air Docket A-98-49.

We will conduct a separate inspection in accordance with § 194.8 to verify that this new waste characterization process is technically adequate and in compliance with Condition 3 of our WIPP Certification Decision (appendix A to 40 CFR part 194) and § 194.24(c)(4). This inspection will occur in July 2001. Documents related to the WAGS system have been placed in Air Docket A-98-49, particularly: "Waste Assay Gamma-Ray Spectrometer (WAGS) System Description, TPR-1561, Rev. 1," and "SWEPP Waste Assay Gamma Spectrometer (WAGS) System, TPR-1654, Rev. 2." In accordance with § 194.8 of the WIPP compliance criteria, we are providing the public 30 days to comment on the documents and on the proposed new process. Because the inspection will occur during the comment period, we will respond to relevant comments received prior to, during, and after the inspection.

If EPA determines that the provisions in the documents are adequately implemented, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, and in the informational docket locations in New Mexico. A positive approval letter will allow INEEL to ship TRU waste characterized by the WAGS system. We will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on EPA's radioactive waste disposal standards (40 CFR part 191), the compliance criteria (40 CFR part 194), and EPA's certification decision is filed in the official EPA Air Docket, Dockets No. R-89-01, A-92-56, and A-93-02, respectively, and is available for review in Washington, D.C., and at the three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket after the October 1992 enactment of the WIPP LWA.

Dated: July 9, 2001.

**Robert D. Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

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