added to the PPG subject to PO approval. The PO and recipient will renegotiate the approved environmental performance agreement goals and revise the PPG program commitments and budgets. EPA will reprogram the funds to be added to a PPG. The recipient must submit a formal amendment to add funding to the PPG. EPA will process the amendments as expeditiously as possible, while maintaining fiduciary responsibility, to accommodate the recipient.

If a recipient chooses to add a categorical grant program to a two-year PPG, the match requirements of that program will then be calculated as part of the overall PPG composite match (see Section 6.5).

If the recipient drops a program at the end of a cycle, based on the recipient's decision to redirect its efforts and with the prior approval of the PPG PO, the PPG recipient shall be reimbursed for allowable costs incurred during the PPG project period.

If a recipient withdraws an environmental program with an MOE requirement from the PPG at the end of the award cycle and seeks funding for the program under a categorical grant, the MOE requirement for the new categorical grant will be no less than the MOE requirement in the fiscal year immediately preceding the entry of the environmental program into the PPG. EPA may approve an adjustment to the MOE requirement for the new categorical grant if EPA determines that there are exceptional circumstances justifying such an adjustment (see Section 6.5). This requirement is a condition of receiving a PPG and, therefore, must be included in all PPG grant agreements.

Section 8.6 Enforcement

If a recipient materially fails to comply with a term or condition in the PPG award, EPA may impose sanctions in accordance with 40 CFR § 31.43, including the conversion of a PPG back to individual categorical grants during the next award cycle.

Section 8.7 Disputes

The dispute process set forth in 40 CFR § 31.70 will apply to PPGs. Disagreements between the recipient and EPA regarding PPG applications, including PPG program commitments, priorities and/or related performance indicators, or PPGs themselves, including disallowances or enforcement actions, are to be resolved at the lowest level possible, i.e., the project officer.

The Regional Administrator designates the Dispute Decision Official—the next level of appeal after the project officer. Because of the multi-media nature of the PPG program, it is suggested that the Regional Administrator select a multi-media Division Director in Regions where applicable, or the Region's Senior Resource Official/Assistant Regional Administrator as the Disputes Decision Official to resolve disputes arising under the PPG assistance agreements.

The Regional Administrator will continue to be the final level of appeal at the Regional level. The Deputy Administrator or his/her designee will serve as the Headquarters Disputes Review Official to resolve disputes arising under PPG assistance agreements appealed to Headquarters.

Attachment 1—Sample Performance Measures

Below are examples of performance measures that fall into three categories:

- Program performance measures,
- Business environmental performance measures, and
- Environmental indicators.

State/Tribal Program Performance Measures suggest how effectively or reliably a State/Tribal program is operating, and are the ones we have traditionally relied on to judge State and Tribal programs. While these kinds of measures will still be required for PPGs, the States', Tribes' and EPA's goals are to reduce these to a minimum, make the ones we use more meaningful, and develop useful measures of cross-program activities such as multi-media pollution prevention, ecosystem management, etc. Measures could include:

—percentage of NPDES permit holders in significant non-compliance,
—percentage of enforcement actions taken within timely and appropriate guidelines,
—percentage of permits up-to-date,
—percentage of river, lake and estuary miles monitored,
—percentage of falsification rates in drinking water data,
—percentage of enforcement actions leading to supplement projects,
—number of permits avoided by helping companies reduce emissions below permit thresholds,
—number of multi-media inspections or permits,
—percentage of State or Tribal program personnel trained in pollution prevention, ecosystem management, or environmental justice, and
—number of innovative pilot programs (e.g., voluntary programs).

Business Environmental Performance Measures assess environmental behavior in the private sector. These measures can complement or substitute for environmental indicators that may be difficult or expensive to measure. Measures could include:

—compliance rates for particular sectors,
—percentage reductions in water generation rates (per unit product),
—percentage reduction in total emissions,
—percentage of facilities participating in voluntary pollution prevention programs and meeting their publicly stated pollution prevention goals,
—number of significant changes at any entity (public or private) that have been made as a result of compliance assistance in three categories: (1) notification, (2) regulatory requirements, and (3) environmental improvements,
—change in the compliance profile of a particular sector, regulated population, or community that is the focus of a compliance assistance initiative,
—percent of entities (public or private) within a particular sector, regulated population, or community that have received compliance assistance, and
—percent of facilities that participate in voluntary compliance assistance programs and come in to compliance within the requisite correction period.

Environmental Indicators measure changes in air, water and land quality parameters and human health. Measures could include:

—the percentage of population exposed to substandard air,
—the percentage of population exposed to substandard water,
—percentage of stream miles meeting designated uses,
—percentage reductions in air pollution such as VOCs, Sox, etc., and
—percentage reductions in dangerous blood-lead levels in children.

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[FRL–5554–3]

Availability of Department of Energy Petition to EPA for a No-Migration Determination for the Waste Isolation Pilot Plant (WIPP) Under the Resource Conservation and Recovery Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency announces the availability for public comment of a petition for a no-migration determination submitted to the Agency by the Department of Energy (DOE) for its Waste Isolation Pilot Plant (WIPP) on June 18, 1996. The WIPP is a geological repository intended for the disposal of mixed hazardous and transuranic wastes generated by DOE in the production and decommissioning of nuclear weapons. The hazardous portion of the waste is subject to the land disposal restrictions of the Resource Conservation and Recovery Act (RCRA), as codified at 40 CFR Part 268. DOE's no-migration petition is intended to show that the WIPP will comply with the land disposal restrictions by demonstrating that hazardous constituents will not migrate out of the WIPP disposal unit for as long as the wastes remain hazardous (a regulatory period of up to 10,000 years).

DATES: Public comments on the no-migration petition should be submitted on or before October 18, 1996.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–96–WI2A–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–96–WI2A–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. For information on accessing paper and/or electronic copies of the document, see the **SUPPLEMENTARY INFORMATION** section.

Copies of the draft petition also are available to the public at RCRA dockets that EPA has opened in New Mexico. These dockets are in the same locations as the currently existing dockets for the EPA Office of Radiation and Indoor Air (ORIA). ORIA is responsible for regulating the radioactive portion of the WIPP waste through 40 CFR Part 191. Petitions are located at: (1) the EPA's docket in the Governmental Publications Department of the Zimmerman Library of the University of New Mexico located in Albuquerque, New Mexico (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); (2) the EPA's docket in the Fogelson Library of the College of Santa Fe in Santa Fe, New Mexico, at 1600 St. Michaels Drive (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); and (3) the EPA's docket in the Municipal Library of Carlsbad, New Mexico, at 101 South Halegueno (open from 10:00 a.m. to 9:00 p.m. on Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). Up to 100 pages of material from the docket may be copied at no cost. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For information on specific aspects of the petition, and issues discussed in this notice, contact Reid Rosnick (703–308–8758), or Chris Rhyne (703–308–8658), Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of 40 CFR 268.6, EPA made a conditional no-migration determination for the WIPP on November 14, 1990 (55*FR*47709). This determination allowed DOE to place hazardous waste subject to the land disposal restrictions of the Resource Conservation and Recovery Act (RCRA) in the WIPP for the limited purposes of below-ground testing and experimentation over a ten year period. In 1993, DOE canceled the proposed test period, after a determination that the tests and experiments could be done faster and more cheaply above ground. As a result, the 1990 determination was made moot, and DOE was informed that a new petition for a long-term demonstration would need to be submitted and approved before any waste could be accepted at the facility. A preliminary draft petition was made available to the public in August of 1995 (see 60 FR 40379 August 8, 1995) as the first step in the Agency's decision process. That draft petition was not complete, in that all of the required information for a long-term demonstration was not contained in the document, and in that it covered only the disposal phase of the project (the first twenty-five years of operation of the facility).

EPA has provided guidance to DOE on the requirements for submitting a complete petition through the Agency's guidance document entitled ''No-Migration Variance to the Hazardous Waste Land Disposal Prohibitions: A Guidance Manual for Petitioners,'' and by encouraging pre-submission discussions with DOE. The Agency has also provided comments on DOE's submitted draft petition to provide early guidance to DOE (available in today's docket).

The petition noticed today addresses the short-term and the long-term migration potential of the RCRA hazardous constituents from the WIPP repository. The EPA encourages the public to provide comments that will inform its review of DOE's petition.

It should be noted that the WIPP is also subject to a RCRA permit for both the above and below ground storage, and disposal of RCRA hazardous wastes at the site. DOE submitted its application for a RCRA permit to the State of New Mexico in June of 1995. In addition, the WIPP must demonstrate compliance with the Agency's environmental radiation protection standards (40 CFR part 191). The RCRA no-migration determination will be made in concert with the determination of compliance with the radiation protection standards. Finally, it should be noted that there is currently a bill in the United States Congress that would, among other things, exempt the WIPP from EPA's land disposal restrictions, eliminating the need for a no-migration determination. Since the status of Congressional action is uncertain at this time, EPA intends to review DOE's petition consistent with current law and regulations. If Congress eliminates the RCRA land disposal restrictions at the WIPP, EPA will publish a notice in the Federal Register announcing that it is ceasing review of DOE's petition.

EPA will review DOE's full petition and determine, through a notice and comment process, whether to issue a no-migration determination, or deny the no-migration petition, consistent with the procedures laid out in 40 CFR 260.20 and 268.6. Interested members of the public now have an opportunity to comment on DOE's petition. After EPA has completed a preliminary review, it will publish a proposed decision for public comment in the Federal Register. EPA's final decision will also be published in the Federal Register.

Dated: August 9, 1996.

Elliott P. Laws,

Assistant Administrator for Solid Waste and Emergency Response.

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