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**FEED MATERIALS PRODUCTION CENTER
DENIAL OF WAIVER OF COMPLIANCE FROM 40
CFR 61, SUBPART Q**

8/30/90

USEPA/DOE-FMPC

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LETTER



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 5
 230 SOUTH DEARBORN ST.
 CHICAGO, ILLINOIS 60604

Tope
 Heckendorn
 Vogel

cc: staff

5471

AUG 20 1990

REPLY TO THE ATTENTION OF
 (5RA-14)

CERTIFIED MAIL
 RETURN RECEIPT REQUESTED

Joe LaGrone, Manager
 United States Department of Energy
 Oak Ridge Operations Office
 P.O. Box 2001
 Oak Ridge, Tennessee 37831

① Copies:
 G. Geis
 P. Berne
 D. Nixon
 S. Bradley
 ② Return to SMB

Re: Feed Materials Production Center
 Denial of Waiver of Compliance from
 40 CFR 61, Subpart Q

Dear Mr. LaGrone:

On May 23, 1990, the United States Environmental Protection Agency (U.S. EPA) issued to the United States Department of Energy (U.S. DOE) a notice of U.S. EPA's intent to deny U.S. DOE's request for a waiver of compliance from the requirements of the National Emission Standards for Radon Emissions from Department of Energy Facilities, 40 CFR 61, Subpart Q for the Feed Materials Production Center (FMPC), Fernald, Ohio. After due consideration of the information U.S. DOE submitted to U.S. EPA in the March 15, 1990, Request for Waiver of Compliance, and the additional information in the June 23, 1990, letter, U.S. DOE is hereby notified that U.S. EPA denies the request for waiver of compliance with Subpart Q. This denial is based on the information U.S. DOE presented pursuant to 40 CFR 61.10(b)(2), which asserted that the K-65 Silos at FMPC exceed the radon flux standard at this time, and final remediation for Operable Unit 4 (K-65 Silos) which will result in compliance with Subpart Q, is not scheduled to begin prior to April 7, 1993. This is longer than 2 years from December 15, 1989, the effective date of the rule. Pursuant to Section 112(c)(1)(B)(ii) of the Clean Air Act, 42 U.S.C. §7412(c)(1)(B)(ii), U.S. EPA cannot grant a waiver of compliance greater than 2 years from the effective date of the rule. Although U.S. DOE's June 29, 1990, letter states that a removal action is planned for the K-65 Silos within 2 years from December 15, 1989, and reduction of radon flux is to be considered in choosing the alternatives, it is not guaranteed that the standard at Subpart Q will be met as a result of the implementation of the removal alternative chosen.

Please note that, in response to U.S. DOE's contention that Subpart Q does not apply prior to final remediation, the preamble to Subpart Q (54 FR 51674) clearly addresses cases in which a facility could not demonstrate compliance by the effective date of the standard. The preamble states that if this were the case, then the United States Department of Energy could request a waiver of the compliance deadline of up to 2 years. If 2 years was not sufficient

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time to complete remediation of the site, then an extended compliance schedule could be discussed with U.S. EPA.

U.S. EPA is prepared to discuss an expeditious compliance schedule with you at this time. The appropriate document to establish such a compliance schedule is in a Federal Facilities Compliance Agreement (FFCA). The draft FFCA for radionuclide NESHAPs, which is currently being negotiated by our agencies, will be a suitable vehicle to set up a schedule for FMPC to comply with the standard at Subpart Q.

If you have any questions concerning this action, please contact me.

Sincerely yours,

/s/ Todd A. Cayer

Valdas V. Adamkus
Regional Administrator