

RCRA, SUPERFUND & EPCRA HOTLINE MONTHLY REPORT
November 1999

1. The Federal Facility Compliance Act and DOE Mixed Waste Storage

The Federal Facility Compliance Act of 1992 (FFCA) waived sovereign immunity for all federal facilities. Until this waiver, federal facilities were immune from all civil and administrative penalties and fines under RCRA. At the same time, the FFCA issued a three-year delay of this waiver for Executive Branch departments, agencies, and instrumentalities storing mixed waste, a waste with a RCRA hazardous waste component and a radioactive component, in violation of the land disposal restrictions (LDR) storage prohibition (RCRA §3004(j)). RCRA §3004(j) prohibits the storage of any restricted hazardous waste, including mixed waste, except for purposes of accumulating quantities necessary to facilitate proper waste recovery, treatment, or disposal. This three-year delay expired October 6, 1995. How does this affect Department of Energy (DOE) facilities currently storing mixed waste in violation of the RCRA §3004(j) storage prohibition?

The expiration of the three-year delay in the effective date of the waiver of sovereign immunity for RCRA §3004(j) violations may not affect DOE facilities currently storing mixed waste. Under RCRA §3021(b), DOE was required to submit either to EPA or to the appropriate state regulatory officials a site treatment plan for developing mixed waste treatment capacity and technologies. Upon approval of a plan, the state or EPA Regional Administrator was required to issue an order to DOE requiring compliance with the plan. According to §102(c)(3)(B) of the FFCA, DOE facilities storing mixed waste continue to have sovereign immunity from violations of RCRA §3004(j) so long as DOE complies with both the approved site treatment plan and the order requiring compliance with that site treatment plan.

All of the Conceptual Site Treatment Plans and Draft Site Treatment Plans were submitted on time (October 1993 and August 1994 respectively). The Final Proposed Site Treatment Plans were submitted one month later than expected in March 1995. As of January 1997, all of the treatment plans for the 35 DOE sites storing mixed waste had been approved by the appropriate regulators.