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STATE AUTHORIZATION AND REGULATION OF RADIOACTIVE MIXED WASTES

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JUN 29 1987

Mr. Steven A. Black
Radiological Services Department
Teledyne Isotopes
50 Van Buren Avenue
Westwood, New Jersey 07675

Dear Mr. Black:

Thank you for your letter of May 29 in which you raised a number of issues regarding the applicability of Resource Conservation and Recovery Act (RCRA) regulations to your radioactivemixed waste brokerage in New Jersey.

Let me begin by providing an overview of how the Federal hazardous waste program would be applicable to your waste management operations. RCRA provides that States may obtain authorization to administer and enforce a hazardous waste program in lieu of EPA. New Jersey and New York have obtained such authorization. However, due to earlier uncertainty about the status of radioactive mixed waste, most States, including New York and New Jersey, have not yet obtained authorization to regulate radioactive mixed waste as part of the authorized State program. This means that radioactive mixed waste is not a "hazardous waste" within the meaning of New Jersey or New York's RCRA authorized State program. However, this does not preclude New Jersey and New York from regulating radioactive mixed waste as a matter of State law, provided that such regulation is not inconsistent with the Federal program.

One of your questions concerned the availability of interim status for "handlers" or radioactive mixed waste. Since neither New York nor New Jersey's RCRA authorized program includes radioactive mixed waste, there is no need yet to obtain interim status with respect to such wastes in those States. However, once States become authorized, facilities handling mixed wastes will need to obtain permits or interim status. The Agency is currently reviewing options for providing interim status to owner/operators of mixed

waste treatment, storage and disposal facilities. Once the options have been considered, the Agency's decision will be announced.

Your second question to New York's authority to regulate radioactive mixed waste under State law. As I indicated previously, New York can regulate radioactive mixed waste under applicable State law although the State cannot administer the Federal program until it has been authorized to do so by EPA. Determining which State requirements apply to your radioactive mixed waste handling operation is a matter of State law. Questions regarding those requirements should be addressed to appropriate State authorities. For further information contact:

Paul Counterman
Bureau of Hazardous Waste Technology
New York State Department of Environmental
Conservation (OEC)
50 Wolf Road
Albany, New York 12233

Third, we are not aware of any inconsistencies between the Nuclear Regulatory Commission (NRC) and EPA storage requirements. EPA regulations do not prohibit storage beyond 90 days. However, EPA does require that a permit be obtained for generators that store hazardous wastes more than 90 days. Of course, a State may require permits even for a lesser holding period.

Lastly, you asked if EPA could issue regulations exempting certain segments of the radioactive mixed waste management operations from RCRA regulations. Any such action on the part of EPA would be inconsistent with the "cradle to grave" management mandate of the hazardous waste program. Consequently, it is unlikely that the Agency will exempt segments of the radioactive mixed waste operations from RCRA unless the subject requirement is inconsistent with the Atomic Energy Act as specified in section 1006(a) of RCRA.

In conclusion, radioactive mixed waste is not yet subject to Federal hazardous waste requirements in New Jersey or New York. Questions about compliance with State requirements should be

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addressed to those states; questions about the Federal RCRA program may be addressed to Betty Shackelford, Mixed Waste Project Manager at (202) 475-9656.

Sincerely yours,

J. Winston Porter
Assistant Administrator

cc: Marcia Williams, OSW
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