

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 21, 1997

MEMORANDUM

SUBJECT: Suspension of RCRA Permitting at Commercial Mixed Waste
Facilities

FROM: Elizabeth Cotsworth
Office of Solid Waste

TO: Regional RCRA Senior Policy Advisors

On April 11, 1997, EPA obtained approval for a revision to the consent decree setting a deadline for the promulgation of the "Hazardous Waste Identification Rule for Waste." In the revised consent decree EPA agreed to seek comment by October 31, 1999 on regulatory relief for wastes generated at nuclear power plants that are both chemically hazardous and radioactive. In a separate letter to the attorney for the Edison Electric Institute, one of the parties to the consent decree, EPA agreed to make a final decision about potential relief for radioactive "mixed wastes" from nuclear power plants by April 30, 2001. In that letter EPA also agreed to recommend that EPA Regions and States authorized to implement RCRA programs provide interim relief relating to the call-in of RCRA Part B permit applications.

This memorandum provides EPA's recommendations regarding interim permitting relief pending completion of the rulemaking described above. In that rulemaking EPA will consider potential relief from RCRA permitting requirements for on-site storage of both mixed wastes generated by nuclear power plants and mixed wastes generated by other commercial entities. Accordingly, in this memorandum the term "commercial mixed waste" refers to any commercially-generated, low-level, radioactive hazardous mixed waste regulated by EPA under Subtitle C of RCRA and by the Nuclear Regulatory Commission (NRC) or NRC-Agreement States under the Atomic Energy Act (AEA).

To eliminate a potentially needless expenditure of resources while EPA evaluates a possible exemption, the Office of Solid Waste (OSW) recommends that EPA Regions and States authorized under RCRA to regulate mixed wastes temporarily suspend the call-in and processing of RCRA Part B applications and the issuance of RCRA permits for facilities which have interim status for the on-site storage of commercial mixed wastes. This permit suspension only applies where the facility is not otherwise subject to RCRA permitting requirements. Moreover, OSW does not recommend any suspension for facilities where Regions or States find a particular environmental concern that merits the call-in or issuance of such a permit.

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Any facility that generates and stores commercial mixed waste for more than 90 days remains subject to RCRA section 3010 notification and Part A filing requirements, other Part 270 interim status requirements, Part 265 interim status standards, and section 3008(h) corrective action authorities, as well as other relevant hazardous waste regulations, including the land disposal restrictions. EPA continues to recommend a low priority for enforcement of the land disposal storage restrictions applying to mixed wastes, but only for facilities that meet the conditions set out in the "Extension of the Policy on Enforcement of RCRA Sec. 3004(j) Storage Prohibition at Facilities Generating Mixed Radioactive/Hazardous Waste", 61 FR 18588, April 26, 1996. In particular, EPA reminds mixed waste generators that they must utilize all available capacity to treat mixed wastes. This new recommendation regarding the temporary suspension of RCRA permitting for interim status facilities does not affect any of the terms of the enforcement policy for the land disposal restrictions.

During this period of permitting suspension, OSW believes that, in general, any risks to human health and the environment from the storage of commercial mixed waste can be adequately addressed under RCRA interim status authorities and AEA regulations administered by NRC or NRC-Agreement States. Finally, OSW notes that this policy will not affect the processing of RCRA permits for new facilities. A letter with identical provisions has been sent to Hazardous Waste Management Division Directors in each State.

If OSW determines that a change in this policy on the suspension of permitting at these facilities is appropriate, it will issue another written policy notice.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APRIL 7, 1997

Douglas H. Green
Piper & Marbury
1200 Nineteenth St., N.W.
Washington, D.C. 20036-2430

Re: Reproposal of HWIR Waste Rule and commercial Mixed Waste

Dear Mr. Green:

This letter follows up on discussions that you and Agency staff have had concerning EPA plans to evaluate possible regulatory relief for commercial mixed waste. (For the purposes of this letter, "commercial mixed waste" refers to low level radioactive hazardous mixed wastes generated by nuclear power plants where such wastes are also subject to regulation under the Atomic Energy Act by the Nuclear Regulatory Commission (NRC) or NRC-Agreement States.)

In a proposed revision to the consent decree for the Hazardous Waste Identification Rule (HWIR) filed in *ETC v. Browner*, Civ. Nos. 94-2119 and 94-2436 (D.D.C.), on April 7, 1997, EPA has agreed to sign a notice of proposed rulemaking no later than October 31, 1999 that will seek comment on, among other things, an exemption from hazardous waste disposal regulation and other regulatory relief as appropriate for commercial mixed waste.

The scope of such a proposal will in part depend on receiving data on commercial mixed waste from Edison Electric Institute (EEI) or others. Depending on the completeness of the data, EPA plans to finalize no later than April 30, 2001, a decision about whether, and what type, of an exemption for commercial mixed waste is appropriate.

In light of this rulemaking effort, EPA's Office of Solid Waste (OSW) will recommend in writing to the EPA Regions and the RCRA-authorized States that, until the resolution of the mixed waste rulemaking, they suspend the calling-in or processing of final RCRA Part B permits at power plants subject to regulation under the Atomic Energy Act by the NRC or NRC-Agreement States where the only reason for a Part B permit is the on-site storage of mixed waste, unless there is a particular environmental concern that merits the calling-in of the permit. The purpose of such a suspension would be to avoid expending resources evaluating Part B permits when a mixed waste rulemaking could possibly eliminate the need for such permits. (Such facilities would remain subject to Part A interim status hazardous waste requirements).

Finally, as you know, EPA has issued a policy that treats violations of the "land ban storage restrictions" of section 3004(j) of RCRA that involve relatively small volumes of mixed wastes as a reduced priority for Federal enforcement. The policy is currently in effect through April 1998. Prior to expiration of this policy, EPA will determine whether any shortfall in treatment and/or disposal capacity for mixed wastes is likely to continue beyond April 1993 and as a consequence, whether any extension of the current enforcement policy is warranted. EPA's planned consideration of an extension to the current policy, however, does not alter the terms of that policy. In particular, please bear in mind that the current policy does not apply to any mixed wastes for which treatment technology and/or disposal capacity is currently available or becomes available during the term of the policy. Nor does it address violations of permitting requirements or other storage regulations. There may be events which would necessitate a change to this plan for evaluating regulatory relief for commercial mixed waste. If so, we will notify you as soon as practicable.

Sincerely,

Fred Hansen
Deputy Administrator

Timothy Fields, Jr.
Acting Assistant Administrator
Office of Solid Waste and Emergency Response