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MAY 10 1985

DEFINITION OF MIXED WASTE (DOE FACILITIES)

SUBJECT: Definition of Mixed Waste (DOE Facilities)

FROM: John Skinner, Director  
Office of Solid Waste

TO: James H. Scarbrough, Chief  
Waste Management Division  
Region IV

This is in response to your memo of April 1, 1985, concerning DOE facilities.

The question of which radioactive wastes are subject to RCRA control turns on the definition of "byproduct material" as defined under the Atomic Energy Act. Such "byproduct material" is not subject to RCRA control. Radioactive wastes that are not "byproduct," i.e., so called "mixed wastes," are subject to RCRA control if the waste exhibits a characteristic or contains listed waste. We have been discussing this issue with DOE for several months and have developed, at staff level, a reasonable definition of "byproduct material." This definition will be proposed by DOE under Atomic Energy Act authority. Subsequently, we will propose administrative regulations setting out procedures for DOE facilities.

In any event, under the RCRA amendments, facility owners and operators of land disposal facilities, including DOE, have a statutory responsibility to submit a Part B permit application and certify that they are in compliance with the Interim status Subpart F requirements (see Section 3005(e)(2)). Since most DOE facilities generate and dispose of non-radioactive hazardous wastes just like other industries, they are subject to this requirement even if the hazardous wastes are combined after generation with radioactive wastes which are not subject to RCRA control. However, the requirements of the statute are not limited to non-radioactive hazardous wastes, but cover all hazardous wastes under RCRA control. There is no provision that exempts land disposal facilities holding "mixed wastes" from the duty to comply with Section 3005(e)(2) simply because DOE has not yet

finalized its definition of "byproduct."

Until DOE promulgates the definition of "byproduct" I suggest that you use the staff level definition as interim guidance. DOE has determined, under that definition, which wastes from each generating plant are byproducts and which are "mixed wastes" subject to RCRA control. We have reviewed those lists and find them to provide a reasonable split between wastes that are hazardous primarily due to radioactivity and those that present primarily a chemical hazard. We suggest that DOE facilities proceed to develop their Part B's based on these tests.

To implement this, we have written a letter to DOE management advising them of their statutory responsibilities and suggesting that they proceed in accordance with the draft definition. Many DOE facilities will be interacting with authorized States rather than EPA. Where appropriate, Regions should pass this information on to those States.

If there are any questions on this matter, call Andrea Pearl (382-2222) or Jon Perry (382-4654).

cc: RCRA Branch Chiefs, Regions I - III, V - X  
Office of Federal Activities  
Regional Federal Facilities Coordinators,  
Regions I - X

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MAY 10 1985

Mr. William A. Vaughn  
Acting Assistant Secretary for  
Policy, Safety, and the Environment  
Department of Energy  
Washington, D.C. 20585

Dear Mr. Vaughn:

I am writing to be sure you are aware of certain statutory responsibilities the Department of Energy (DOE) has in managing certain wastes under the new amendments to the Resource Conservation and Recovery Act (RCRA). Under these amendments (Section 3005 (e)(2)) owners and operators of hazardous waste land disposal facilities, by November 8, 1985, must:

- (a) submit a RCRA Part B permit application to EPA or an authorized State,
- (b) certify that they are in compliance with the interim status groundwater monitoring requirements of Subject F of 40 CFR part 265, and
- (c) certify compliance with the interim status financial requirements of Subpart H of 40 CFR Part 265 (under §265.140(c) Federal facilities are exempt from these requirements--certification should simply so state).

Failure to do so will automatically result in loss of interim status for these facilities and they will therefore be operating illegally.

As you are probably aware, our staffs have been meeting for some months to discuss acceptable definitions for determining which radioactive wastes are subject to RCRA control (so-called "mixed wastes") and which are "byproduct" materials and thus exempt from RCRA. Your Office of General Counsel has developed a definition that reasonably accomplishes this and your generating plants have identified specific waste streams that fall in each category. My staff has reviewed these lists and finds that they generally

relegate wastes that pose a chemical hazard to RCRA control while those that pose a high level radioactivity hazard are generally exempt as "byproduct materials". But it does not appear that in the near future remaining questions surrounding the definition of "byproduct" will be fully resolved and the definition proposed and promulgated under the Atomic Energy Act.

The November 8 deadline is rapidly approaching, and developing permit applications and groundwater monitoring systems that meet the RCRA requirements are time consuming activities. Therefore, as an interim approach, I recommend that DOE use the lists of wastes developed from the staff definition in determining which wastes and waste management facilities are subject to RCRA regulatory control for the purpose of complying with the November 8 deadline. Also, many of your plants generate nonradioactive hazardous wastes subject to RCRA control. These wastes and DOE facilities managing them must also comply with the new amendments to the statute.

Many States have been authorized to manage the permitting operation. In those States, your application should be sent to the appropriate State agency. Our regional offices (contact list enclosed) are prepared to counsel your facilities on this matter. Truett DeGeare (382-2210) is the appropriate contact on permitting questions in Washington. Guidance on the mechanics of certifying compliance with the monitoring rules will be issued in the near future. Bob Linnett (382-4844) is the appropriate contact should you have questions in the meantime.

Sincerely,

Original Document signed

Jack W. McGraw  
Acting Assistant Administrator

Enclosure