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# NOTICE CLARIFYING THE AVAILABLITY OF INTERIM STATUS FOR FACILITIES IN UNAUTHORIZED STATES HANDLING RADIOACTIVE MIXED WASTE

July 12, 1988

MEMORANDUM

SUBJECT: Notice Clarifying the Availability of Interim Status for Facilities in Unauthorized States Handling Radioactive Mixed Waste -- Transmittal Memo

FROM: Sylvia Lowrance, Director
Office of Solid Waste

TO: J. Winston Porter
Assistant Administrator

## PURPOSE

This memorandum transmits a Federal Register notice for the Administrator's signature which extends the deadline for facilities that treat, store or dispose of radioactive mixed waste in unauthorized States to submit a Part A permit application in order to qualify for interim status. The notice also reiterates that qualification for interim status in authorized States is a matter of authorized State law.

## BACKGROUND

EPA published a Federal Register notice clarifying the Agency's position that radioactive mixed waste is subject to Subtitle C regulations. That notice informed authorized States that they were required to amend their existing programs and obtain authority to regulate the hazardous component of radioactive mixed waste in order to maintain existing authorizations. The notice further announced that States seeking initial authorization after July 3, 1987 must include authority to regulate radioactive mixed waste in their initial application. The July 3 notice did not, however, delineate the responsibilities of handlers of radioactive mixed waste in unauthorized States. Because of the omission from the notice, owners and operators of facilities that treat, store or dispose

of radioactive mixed waste in unauthorized States have been confused about their obligations under RCRA and about the availability of interim status for this hazardous waste activity.

For this reason, we are extending the deadline for facilities handling mixed waste in unauthorized States to obtain interim status.

SCOPE OF THE NOTICE

The attached FR notice clarifies the availability of interim status for treatment, storage and disposal facilities (TSDF's) located in unauthorized States and extends the deadline for owners/operators of such facilities to submit a Part A permit application in order to qualify for interim status. The availability of interim status for TSDF's in authorized States has not been an issue. However, the notice does point out that facilities in authorized States must comply with authorized State law in order to obtain interim status. Additionally, the notice highlights the Agency's commitment to work with the regulated community on those aspects of the hazardous waste program which may pose unique implementation challenges because of the nature of the radioactive constituent of some mixed wastes.

EXPECTED REACTIONS

RCRA's applicability to mixed waste has been controversial and challenged by many segments of the regulated community. However, EPA clarified its position that these wastes were indeed subject to hazardous waste regulations as previously indicated, by notice in the FR of July 3, 1986. Likewise, the Department of Energy (DOE) embraced the EPA position in its final definition of byproduct material which was published in the FR on May 1, 1987. As a result, DOE and other Federal facilities have been working aggressively to comply with RCRA regulations and no adverse reaction is anticipated from them following issuance of the notice.

Unlike Federal facilities, the nuclear power industry has been confused about the implications of the attached notice. They believe its issuance will now subject them to hazardous waste regulations. However, this notice extends the date for submittal of the Part A permit application whereby TSDF's may continue handling mixed waste in compliance with the law. This

confusion by the utilities may stem from their belief that the EPA/NRC approach to dual regulation of mixed waste is not in accordance with Congressional intent. Moreover, the utilities contend dual regulation is duplicative and burdensome while affording no greater level of environmental protection than that accomplished by sole NRC regulation. It is anticipated that the utilities may challenge the interim status clarification notice.

Because we anticipate this adverse response from the utilities, a communication strategy targeting utility trade associations and related groups has been developed and is also attached.

RECOMMENDATION

The attached notice apprises owners and operators of TSDF's in unauthorized States of their obligations under RCRA and extends the date for submission of a Part A permit application in order to qualify for interim status. In the absence of this initiative, TSDF's in unauthorized States may be required to discontinue mixed waste management until a final RCRA permit is issued. The attached notice has received OGC concurrence and reflects the clarifications they requested. OWPE has also reviewed and concurred on the interim status clarification notice. Therefore, I recommend you transmit the notice to the Administrator for signature.

Attachments