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REGULATION OF MIXED WASTES AT DOE FACILITIES

SUBJECT: Regulation of "Mixed Wastes" at DOE Facilities

FROM: John H. Skinner
Director
Office of Solid Waste

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

The purpose of this memorandum is to respond to your request for guidance on the ability of States and Regional Offices to regulate "mixed wastes" (those wastes which have both radioactive and hazardous characteristics, but which are not "by-product" material) at DOE facilities.

The first issue is whether States are authorized to handle mixed wastes. The answer is that they are not. A State may of course regulate mixed waste pursuant to State law, however, such regulation is not part of the authorized State RCRA program. When a State applies for authorization to operate its RCRA program, EPA reviews each portion of its program to ensure that it is equivalent to the Federal requirement. Because EPA had no interpretation on the radioactive waste exemption, there is no way that EPA could have reviewed the State programs for equivalence. When EPA publishes a Federal Register notice explaining its interpretation of the mixed waste issue, States will be required to develop equivalent authority, or, if such authority is already part of their hazardous waste program, they will be required to certify (through the Attorney General) that they are interpreting the radioactive waste exemption in the same manner as EPA. I refer you back to my May 1, 1985, memorandum on the applicability of RCRA to DOE facilities for a more detailed discussion of this issue.

The next issue which you raise is whether DOE should be sending Part B applications to various authorities

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based on whether the facility handles mixed or RCRA-only wastes. I understand your confusion on this issue and will try to clarify it here.

For purposes of the wastes that are clearly under RCRA, the answer here is no different than it is for any facility at this stage of the RCRA program. Where a State is authorized for the RCRA program, EPA and the States are currently involved in issuing RCRA permits because of joint permitting under the Hazardous and Solid Waste Amendments of 1984 (HSWA). Therefore, a complete RCRA permit application should be sent to both authorities. For a discussion of this joint permitting process, see RCRA Statutory Interpretation #5, dated July 1, 1985. Where EPA operates the hazardous waste program, DOE should submit only one application directly to EPA.

Both EPA and DOE have agreed that RCRA also applies to DOE facilities handling certain mixed wastes. Permitting these facilities is a bit more complicated. Where a State is authorized it can issue RCRA permits only for RCRA wastes. If a State also has authority under its own laws to regulate mixed waste, the State portion of the permit will address that mixed waste although this portion of the permit will not be part of the RCRA permit. We recognize the limitations of this approach, however, we simply do not have the authority to do otherwise; the State's authorized program operates in lieu of EPA's which means that EPA cannot issue a RCRA permit covering those wastes either. EPA has authority to directly conduct permit activities in an authorized State only when the regulations governing that activity derive from HSWA. The addition of mixed wastes to the Federal universe of RCRA-regulated wastes is not pursuant to HSWA. Therefore, EPA has no authority to permit such activity in an authorized State. Until such time as the State is specifically authorized for mixed wastes, EPA cannot enforce any State permit conditions relating to such wastes.

Where the State is not authorized, EPA will be issuing the permits for mixed waste and these permits will be RCRA permits. The only remaining question, therefore, is how to define mixed waste. Although we do not yet have a final definition of mixed waste (due to remaining questions over "by-product" material), we recommend that permits be issued for those mixed wastes which DOE acknowledges are subject to RCRA, based on waste stream analyses that were generated by

DOE at individual plants. They were reviewed by the EPA technical workgroup addressing DOE issues and were determined acceptable for use in permitting. You should be requesting those documents from the specific DOE facilities which you will be regulating. You should make sure that the documents are the original studies that have not been revised since EPA's review. Headquarters policy is that where you suspect a DOE facility is handling nonradioactive hazardous waste, you should proceed with the Part B application unless and until you are notified by the facility that it does not handle such wastes. In addition, DOE controlled mixed waste as indicated in the waste stream analyses is subject to RCRA if such wastes are mixed with RCRA waste after generation, e.g., where the waste is placed in a RCRA site.

I have also included a copy of the staff level definition of by-product material referred to in my May 10, 1985, memorandum as per your request, however, please realize that it is still in draft form. If you have any additional questions on this matter, please feel free to call Andrea Pearl of our State Programs Branch at FTS 382-2210.

Attachment

cc: Thomas W. Devine, Director, Waste Management Division,
Region IV
RCRA Branch Chiefs, Regions I-X
State Programs Branch, OSW
Permits Branch, OSW
Fred Lindsey, OSW
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