

PPC 9541.1984(08)

RADIOACTIVE WASTE EXEMPTION IN NORTH AND SOUTH CAROLINA

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

SEP 13 1984

MEMORANDUM

SUBJECT: Radioactive Waste Exemption in North and South  
Carolina

FROM: Lee M. Thomas  
Assistant Administrator

TO: Charles R. Jeter  
Regional Administrator  
Region IV

Thank you for your memorandum of July 11 regarding the exemption of radioactive materials in North and South Carolina's hazardous waste statutes. You asked whether their programs could be authorized with these exemptions. The answer is yes for the reasons described below.

On February 21 I wrote to Regional Administrator Ernesta Barnes on the subject of State regulations of radioactive wastes. In that memorandum I explained that there are three categories of radioactive waste. The first category - source, special nuclear and by-product materials defined by the Atomic Energy Act - is excluded from the definition of solid waste in RCRA; therefore, RCRA does not provide authority for us to regulate these wastes as hazardous waste and we do not require authorized States to do so. The second category is "mixed" waste; i.e., those wastes which consist of source, special nuclear or by-product material and RCRA hazardous waste. At the time of my writing, we had not determined the extent of EPA's authority over such wastes, and therefore did not require States to have jurisdiction over or regulate "mixed" wastes. The final category consists of radioactive wastes outside of the source, special nuclear or by-product universe such as naturally-occurring radionuclides and accelerator-produced radioisotopes. Such wastes are

also hazardous if they are listed in 40 CFR Part 261, Subpart D, or when they exhibit any characteristic identified in Part 261, Subpart C.

North and South Carolina's laws do not extend the full range of RCRA controls over this last category of radioactive hazardous wastes. A question has arisen about whether any of these wastes in fact exist. Since no wastes currently listed in Part 261, Subpart D, are radioactive, we focused on whether there are any naturally-occurring or accelerator-produced wastes that exhibit a Subpart C characteristic. After checking with the Office of Radiation Programs, which has consulted with the regulated community and research organizations, we have determined that no such wastes are known to exist (copy of memorandum attached). From this determination we now conclude that it is inappropriate to require States to demonstrate control over this hypothetical category of wastes to obtain final authorization. Accordingly, North and South Carolina need not amend their statutes to obtain final authorization.

I also wish to apprise you of recent developments in the area of those mixed wastes which consist of source, special nuclear, or by-product material and RCRA hazardous waste. Since issuance of the February 21 memorandum, we have determined that RCRA authority does extend to these mixed wastes. We are now working with the Department of Energy to determine how best, under RCRA and the Atomic Energy Act, to implement this authority. States need not yet revise their programs to regulate mixed wastes since EPA must still resolve some definitional issues. However, you may wish to advise them of this development, should they wish to initiate changes in their programs to obtain legal authority to regulate mixed wastes. At that time we would also advise States to obtain jurisdiction over the third category of non-excluded radioactive and hazardous waste in the future event that a non-excluded radioactive waste is listed or we discover that such a waste exhibits a hazardous characteristic. Once we have defined our implementation program characteristic. Once we have defined our implementation program we will work with the Regional Administrators to guide States in revising their programs as required by 40 CFR 271.21. In the meantime, EPA is responsible for inspecting the RCRA program with respect to mixed wastes.

I appreciate you bringing this situation to my attention.

Please let me know if you have further questions.

Attachment

cc: Regional Administrator, Regions I-III and V-X  
Regional Hazardous Waste Division Director, Regions I-X  
Regional Counsel, Regions I-X

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE AUG 1 1984

SUBJECT Existence of Hazardous Non-Excluded Radioactive Wastes

FROM Waste Management Standards Branch  
Criteria & Standards Division (ANR-460)

TO John H. Skinner, Director  
Office of Solid Waste (WH-562B)

THRU: Richard J. Guimond, Director  
Criteria and Standards Division (ANR-460)

Glen L. Sjoblom, Director  
Office of Radiation Programs (ANR-458)

On February 21, 1984, Assistant Administrator Lee Thomas sent a memo to Regional Administrator Ernesta Barnes, detailing the Agency's position on which radioactive wastes are outside the source, special nuclear, or by-product universe exempted under RCRA. This memo stated that the wastes which could fall under RCRA's authority include naturally-occurring radionuclides and accelerator-produced radioisotopes. The memo went on to say that authorized States must regulate these wastes when they are listed under 40 CFR Part 261, Subpart D, or when they exhibit any characteristics identified in Subpart C.

You have recently asked us to clarify whether any nonexempted wastes exist which are also hazardous because they exhibit a characteristic under 40 CFR Part 261, Subpart C (no nonexempted wastes are currently listed under Subpart D). Georgia, North Carolina, and South Carolina have indicated to you that no such wastes exist in their jurisdictions. Discrete sources of low-level radioactive wastes, such as radium (naturally-occurring) or accelerator-produced wastes are the only wastes which presently fall into the nonexempted category. This does not include mining and beneficiation wastes which we presently do not regulate under RCRA. To our knowledge, none of these wastes are hazardous under Part 261.

I hope the above information is of use. Should you have any further questions, please feel free to contact me.

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