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BYPRODUCT MATERIAL AND MIXED WASTE, AEA AND DOE INTERFACE

JUN 2 1986

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Definition of Byproduct Material

FROM: Marcia E. Williams, Director  
Office of Solid Waste

TO: Thomas W. Devine, Director  
Waste Management Division  
Region IV

In response to your memorandum of March 12, 1986, we have outlined below how you and the State of South Carolina can proceed with permitting and/or enforcement actions leading to issuance of a RCRA permit at the Savannah River Plant (SRP).

Universe of Mixed Waste

EPA has seen and reviewed some of the waste stream booklets prepared by DOE facilities. We reviewed the one for SRP several years ago, but we understand that it was since revised. The booklets do not provide definitive lists of wastes that are and are not regulated under RCRA. They merely provide a starting point for negotiating with the facility to determine which wastes are regulated.

The definition of "byproduct material" in the Atomic Energy Act (AEA) does not explicitly resolve the question of which wastes are, in their entirety, byproduct material, and are thus exempt from RCRA, and which are mixtures of byproduct and hazardous waste and are thus regulated under RCRA. The definition of byproduct in 10 CFR 20.3 which you referenced in your memorandum is merely a restatement of the statutory definition and, thus, does not provide definitive guidance to determine which byproduct wastes are regulated and which are excluded.

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DOE recently proposed a revised definition of byproduct material (November 1, 1985, 50 FR 45736). The proposal did not meet with favorable public comments and it is unlikely that they will finalize the rule in the near future. The only way States will be able to judge which waste streams at any DOE facility should be regulated is to work directly with the facility to make case-by-case decisions based on the AEA definition. However, EPA considers all mixed waste streams to be subject to Federal regulations under RCRA. We would expect that States with the same radioactive waste exemption as EPA would also include all mixed wastes in their regulatory universe. However, until the States are authorized for mixed wastes, it is possible that their interpretations of their statutes may differ from EPA's interpretation of RCRA.

#### Use of RCRA Authorities

The Savannah River Plant should provide to the State of South Carolina a permit application for all waste units regulated under State law. Based on that information, the State should proceed to process and issue a RCRA permit covering all RCRA-regulated units at the facility. Units containing mixed wastes (or suspected of containing mixed wastes) are currently not covered under the authorized RCRA program in South Carolina. However, if the State regulates mixed wastes under State law, units containing such wastes may also be addressed within the State permit.

The State should obtain security clearances, where necessary, and use its full range of enforcement authorities to gain access to the site and to require sampling and analysis by the facility to determine whether units should be regulated. Headquarters DOE has assured full cooperation in obtaining security clearances for State personnel.

EPA can also use its HSWA authorities to supplement an authorized State's authority over RCRA-regulated units. Under §3004(u), EPA can jointly issue a permit with the State and impose corrective action requirements on hazardous waste management units and solid waste management units (SWMU's) at facilities that contain RCRA-regulated units. Although mixed waste units are not RCRA-regulated under authorized State RCRA programs, mixed waste will be considered to be a "solid waste" for purposes of corrective action at solid waste management units.

The Federal definition of "solid waste" is to be used in determining what units are SWMU's, because State definitions were not scrutinized in evaluating applications for State authorization (except as was necessary to assess the adequacy of the State's universe of hazardous waste).\* Because mixed waste is considered a solid waste under the Federal RCRA program, units containing mixed wastes are SWMU's and are subject to corrective action if there is another unit requiring a RCRA permit at the facility.

\* Therefore, in order to obtain authorization for corrective action, States must obtain authorization for their definition of solid waste, which may not exclude mixed waste. As noted earlier, a mixed waste unit is not a RCRA-regulated unit in an authorized State. Therefore, there must be at least one non-mixed, hazardous waste unit at a facility in order for EPA to subject mixed waste units to corrective action requirements under §3004(u).

Similarly, EPA may issue an order under §3008(h) requiring monitoring, investigation of releases and corrective action, but the order can apply to mixed waste units only if there is one or more unit subject to interim status requirements at the site.

#### Response to Specific Questions

In response to the three bullets and the three numbered items on page 2 of your memorandum, we have the following answers:

- If you suspect that Part B's have not been submitted for all RCRA units, EPA and/or the State should take immediate enforcement action. You and the State should determine who should appropriately take enforcement action. If there are mixed waste units in question, EPA cannot enforce submission of the Part B's in an authorized State. While EPA cannot issue penalties to another Federal agency, the dispute resolution process described in the revised Federal Facility Compliance Strategy may be used.
- Review of the Part B submitted by SRP may provide you and/or the State with sufficient information to make such a determination. However, if it does not, then

EPA and/or the State should require SRP, through enforcement action, to make such a determination through sampling and analysis or whatever other method (e.g., application of knowledge of waste generation process) may be appropriate.

- As stated earlier, the booklets only provide a starting point for negotiations. EPA HQ will not be reviewing or approving the individual facility booklets.
- 1. The May 10 letter to DOE did not delegate any authority. Therefore, it need not be withdrawn.
- 2. The AEA definition of byproduct is the only appropriate and legally enforceable definition that can be used. You should use that definition to make case-by-case decisions, as described on page 1 of this memorandum.
- 3. There is no documentation available of the EPA review

I hope this sufficiently clarifies your and the State's current authorities with respect to permitting and enforcement actions you might take at SRP. We will continue to work with you to resolve any remaining issues, and would appreciate being kept informed about the progress you and the State of South Carolina are making in resolving these issues with SRP.

cc: Jim Scarbrough, Region IV  
Richard Campbell, Region IV  
Joe Freedman, OGC  
Tony Baney, OWPE  
Peter Guerrero, OSW  
RCRA Division Directors, Regions I-III, V-X (with incoming)  
RCRA Branch Chiefs, Regions I-III, V-X (with incoming)