

9441.1987(41)

HIGH-LEVEL, TRANSURANIC, AND LOW-LEVEL RADIOACTIVE MIXED WASTE

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JUN -1 1987

MEMORANDUM

SUBJECT: Determination on Issues Pertinent to Mixed Waste
Regulation in Colorado

FROM: J. Winston Porter, Assistant Administrator

TO: James J. Scherer
Regional Administrator

This is in response to Alexandra Smith's March 25, 1987, memorandum in which a number of issues were raised regarding the applicability of RCRA to high-level, transuranic and low-level mixed waste.

The Agency published a Federal Register notice on July 3, 1986 which clarified the applicability of RCRA to radioactive mixed waste. The notice stated that "radioactive mixed wastes are wastes that contain hazardous wastes subject to RCRA and radioactive wastes subject to the Atomic Energy Act (AEA)," and that the hazardous component of such wastes are subject to RCRA regulation. The scope of radioactive materials defined by the AEA includes source, special nuclear, and by-product materials. Radioactive mixed waste may include any AEA radionuclide, regardless of further subclassification of the radioactive waste as highlevel, transuranic or low-level waste.

Although the Mixed Energy Waste Study (MEWS) was commissioned by Lee Thomas to examine the viability of a DOE proposal for exempting high-level and transuranic mixed wastes from RCRA jurisdiction, a final determination on this option has not been made. However, the July 3, 1986 Federal Register notice provides for States to receive authorization to regulate mixed wastes, regardless whether it is high-level, transuranic, or low-level. Therefore, even though the Rocky Flats Compliance

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Agreement does not specifically include high-level or transuranic mixed wastes, Colorado's authorization for radioactive mixed waste gives the State the authority to regulate those wastes. You should note, however, that based on information given to EPA's MEWS task force, no high-level wastes are generated or managed at Rocky Flats. I have enclosed a copy of the final MEWS report as requested by Mr. Smith for further information.

Furthermore, I will keep you and the other Regional Administrators apprised of any developments that could potentially affect the administration of the mixed waste program. For example, DOE finalized its rulemaking on the definition of "byproduct material" on May 1, 1987 (52 FR 15937). DOE's final rule which defines byproduct material as interpreted by EPA and the Nuclear Regulatory Commission, stipulates that the nonradioactive "hazardous component" of wastes which heretofore may have been construed as byproduct material is now subject to RCRA regulation. The implications of that notice are quite far reaching since waste streams which may have been excluded from RCRA jurisdiction under the proposed rule are now clearly included in the RCRA system. Staff are currently preparing an interpretative memorandum addressing the potential implications of DOE's byproduct rule which will be available to you in the near future.

If I can be of further assistance in clarifying issues pertinent to mixed waste regulation, do not hesitate to contact me.

Enclosure