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MIXED WASTE REGULATION - RCRA REQUIREMENTS VS. NRC REQUIREMENTS

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JUN 26 1989

Mr. Donald A. Barbour
Nuclear Metals, Inc.
2229 Main Street
Concord, Massachusetts 01742

Dear Mr. Barbour:

Thank you for your letter of April 6, 1989 to EPA Administrator William Reilly regarding inconsistencies between the Nuclear Regulatory Commission's (NRC) and EPA's regulatory programs. In that letter you identified both regulatory requirements and routine radioactive waste management practices as examples of inconsistencies between the Atomic Energy Act (AEA) and the Resource Conservation and Recovery Act (RCRA).

The first joint initiative undertaken by EPA and NRC was a comparative study of the respective agencies regulatory program. The purpose of that study was to delineate inconsistencies. None were identified although differences in stringency were. However, implementation of the dual regulatory program may reveal instances where compliance could result in an inconsistency. However, RCRA permitting and/or administrative requirements are not examples of inconsistencies. Neverthe-less, I would like to respond to each of the concerns and proposed resolutions you raised.

First, you indicated generators of mixed waste may routinely treat the waste to conform with NRC waste form requirements and/or Department of Transportation (DOT) shipping require-ments. You expressed concern that this treatment might force generators into the RCRA permitting scheme.

Admittedly, the overwhelming majority of mixed waste handlers are already licensed by NRC for operations involving the radioactive constituent of the waste. Also, hazardous waste

treatment, storage or disposal that may have been incidental to radioactive waste management must now be brought into conformance with regulatory requirements for hazardous waste management including permitting. However, not all hazardous waste handling processes must be permitted under RCRA. Facilities engaged in recycling, resource recovery, totally enclosed treatment and certain in tank treatments within the generators 90 day accumulation time do not require a RCRA permit, for example. Generators need to assess their waste management operations and processes to take advantage of these and other exemptions which may be available.

Second, you suggested the benefits of storage for decay of high activity waste may not be fully exploited by generators because storage beyond 90 days would warrant a RCRA permit.

In addition to storage of high activity wastes to minimize occupational exposures, storage for decay of short-lived radionuclides is also a common practice. The latter practice could potentially allow certain mixed wastes to be managed solely as hazardous waste. Staff is currently assessing the implications of RCRA on these practices. This effort, however, has been hampered because of scanty information on the actual number of facilities and waste volumes in this category. Currently, the Agency is not considering changes to existing storage rules although some modification may be justifiable in the future.

Third, you commented that the absence of disposal capacity will force generators that might otherwise be exempted from hazardous waste permitting requirements to obtain RCRA storage permits.

Mixed waste disposal capacity like low-level waste disposal capacity is unlikely to be available until after the January 1, 1993 deadline established by the Low-Level Radioactive Waste Policy Act Amendments of 1985. Even then, the probability of national mixed waste capacity being available is small. This uncertainty underscores the need to ensure that mixed wastes are managed in a manner which protects human health and the environment from the hazardous constituent of the waste. The Agency is developing guidance jointly with NRC that will integrate the respective regulatory regimes for storage. The Agency has undertaken this initiative because of anticipated

long-term storage of mixed waste.

Fourth, you indicated dual manifesting would be cumbersome and recommend use of the radioactive waste management manifest.

As you know, NRC manifesting data elements differ for wastes destined for disposal versus treatment or storage under RCRA. Similarly, information necessary to satisfy EPA recordkeeping and reporting requirements may not be data elements on the NRC manifest. We have explored the practicality of using a single manifest with NRC and both agencies agree that dual manifesting represents a reasonable and expeditious approach.

Fifth, you questioned whether mixed waste could be shipped from a State where the waste was a hazardous waste and subject to RCRA to a facility in a State where the waste was not hazardous waste.

EPA regulations at 40 CFR Part 262.20(b) require generators of hazardous waste "to designate on the manifest one facility which is permitted to handle the waste described on the manifest." The regulations are clear that the facility so designated is the "designated facility" as defined in the Section 260.10. That definition refers specifically to Section 262.20, the requirement that generators designate a permitted facility. Thus, a "facility which is permitted to handle the waste" must also be a facility that fits the definition of "designated facility." Under that definition, a designated facility must: [1] have an EPA permit (or interim status) in accordance with the requirements of Parts 270 and 124, [2] have a permit from a State authorized in accordance with Part 271, or [3] be a treatment, storage or disposal facility that is regulated under Section 261.6(c)(2) or Subpart F of Part 266, and that has been designated on the manifest by the generator pursuant to Section 262.20.

The phrase "in accordance with" as used in the definition of designated facility can be read to imply that if a RCRA permit need not be issued to a facility because the waste is not hazardous under authorized State law, then the waste could be delivered to that facility without violation of authorized State or Federal law. It should be noted that this interpretation of "designated facility" reflects the special situation where

hazardous waste in one State is shipped to a second State that does not regulate the waste as hazardous.

Sixth, you expressed concern that transporters may need to obtain a "State hazardous waste transporter permit" which could impede mixed waste shipment.

Transporters are not required to obtain a RCRA permit. Rather, transporters must comply with the regulations governing handling, transportation, and management of hazardous waste. EPA has also adopted DOT hazardous materials transportation regulations as necessary to protect human health and the environment in the transportation of hazardous waste. EPA's transporter standards are found at 40 CFR Part 263.

You should note that while transporters are not required to obtain a permit under Federal regulations, State are not precluded from developing such regulations under authorized State law. No authorized State has instituted such a requirement for hazardous waste transporters although New York is considering such a State law.

Last, you commented that you reconsideration or change in the Federal regulatory status of used oil "should consider the advantages of preserving present disposal options for radioactively contaminated waste oil."

As you know, used oil is not "listed" as a hazardous waste under RCRA. However, the Court of Appeals has overturned this 1986 decision, and the Agency is currently re-evaluating the technical basis for listing used oil on an accelerated schedule. To date, the Agency has not made a finding on the regulatory status of used oil although, any such finding will be predicated on environmental considerations.

However, authorized State hazardous waste programs may be "broader in scope" than the Federal program. And, consistent with this provision, used oil may be listed as a hazardous waste under authorized State law. Several States have, in fact, established such a waste listing. Handlers of mixed waste need to be cognizant of the scope of authorized RCRA programs to ensure compliance with applicable regulatory requirements.

I hope my comments have been useful in delineating the

Agency's position on regulation of mixed waste. Again, thank you for your comments and analysis of what are certainly some of the key areas of concern regarding dual regulation of mixed waste. While immediate plans do not include revamping the RCRA program specific to mixed waste, certainly the issues you raised will receive additional attention as we continue to refine our regulatory program.

Sincerely,

Original Document signed
"Suzanne Kudzinsk for"

Joseph S. Carra
Director
Permits and State Programs

cc: John Greeves, U.S. NRC