

PPC 9441.1991(02)

TC APPLICABILITY TO MIXED WASTE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FEB 12 1991

MEMORANDUM

SUBJECT: Applicability of the TC to Mixed Waste

FROM: Sylvia K. Lowrance, Director  
Office of Solid Waste

TO: Regional Waste Management Division Directors  
Regions I - X

#### Purpose

The Environmental Protection Agency (EPA) promulgated the Toxicity Characteristic (TC) rule on March 29, 1990 (55 FR 11798). That rule will bring a large number of waste generators, including mixed waste handlers, under Subtitle C regulation for the first time. However, the preamble to the TC rule does not discuss mixed waste. Regional staff have indicated that there is some confusion regarding the applicability of the TC to this category of waste, and have requested a clarification statement on the issue. The purpose of this memorandum is to clarify the applicability of the TC to mixed waste in authorized and unauthorized States, as well as the Federal regulatory status of those wastes.

#### Background

Mixed wastes are defined as wastes which contain both a radioactive component subject to the Atomic Energy Act ((AEA) i.e., source, special nuclear, or by-product material) and a hazardous component subject to the Resource Conservation and Recovery Act (RCRA). Up until 1986, the applicability of RCRA to mixed waste was unclear, in part because of uncertainty about the effect of the exclusion in RCRA Section 1004(27) (the definition of solid waste) for AEA-regulated materials, and because of disagreements about the scope of the definition of "by-product material."

To clarify the applicability of RCRA to mixed waste, EPA issued a clarification notice on July 3, 1986 (51 FR 24504). In that notice, the Agency announced that the hazardous component of mixed waste is subject to RCRA requirements and that the radioactive portion of the waste (source, special nuclear, and by-product material) is subject to AEA. EPA also required States which had obtained RCRA-base program authorization prior to the July 3 notice to revise their programs to clarify the regulatory status of mixed waste (i.e., to include the hazardous component of mixed waste in their program definition of solid waste), and to apply for EPA authorization of their revised program. The Department of Energy (DOE) clarified the term "by-product material" in an interpretative rule on May 1, 1987 (52 FR 15937). That rule stipulated that, in mixed wastes, only the actual radionuclides are considered by-product material. DOE's interpretative rule is consistent with EPA's earlier clarification notice.

EPA's July 3, 1986 clarification notice described three general regulatory scenarios for mixed waste based on the authorization status of a State's hazardous waste program:

- o In a State which is not authorized for the RCRA-base program, mixed waste is subject to the Federal hazardous waste management requirements, and EPA administers and enforces the requirements for mixed waste until the State receives mixed waste authorization.
- o In a State with both RCRA-base program and mixed waste authorization, mixed waste is subject to the hazardous waste management requirements, and the State administers and enforces its requirements for mixed waste (of course, if the waste were newly listed or identified pursuant to a Hazardous and Solid Waste Amendments (HSWA) provision, and the State was not yet authorized for that listing or characteristic, EPA would administer the requirements).
- o In a State which is authorized for the RCRA-base program, but not specifically authorized for mixed waste, this waste is not subject to the Federal hazardous waste requirements until the state revises its program and receives authorization specifically for mixed waste. (A State may, however, regulate mixed waste under State law under any of these three scenarios).

The chart in Attachment 1 shows the regulatory scenarios for mixed waste in authorized and unauthorized States. The section below describes the applicability of the TC to mixed waste in these regulatory scenarios.

#### Applicability of the TC to Mixed Waste

The status of mixed waste that fails the toxicity characteristic (i.e., the Toxicity Characteristic Leaching Procedure) follows the scheme described above. Specifically, the TC rule brings some additional mixed waste streams into the RCRA Subtitle C system in States that are not authorized for the RCRA-base program, and in States that are authorized for mixed wastes. However, in States that are authorized only for the RCRA-base program, mixed wastes that fail the TC will not be considered hazardous under Federal regulations. Once those States become authorized for mixed waste, then this waste will be subject to the TC.

The Agency's position on the applicability of the TC to mixed waste is consistent with an earlier determination on a related issue regarding the land disposal restrictions program. EPA determined that HSWA's land disposal restriction provisions in Section 3004(d)-(h) do not apply to mixed wastes in States with only RCRA-base program authorization (see Attachment 2, Mixed Waste Position Paper, Issue 3). The basis for that determination is that the land disposal restrictions apply to "solid waste" which is hazardous. As mentioned above, mixed waste is not a solid waste in a State with only RCRA-base program authorization. Therefore, the land disposal restrictions do not apply to mixed waste in a RCRA-base authorized State until the State revises its program (i.e., defines this material as a solid waste) and receives EPA authorization for mixed waste.

Similarly, the TC, which was also promulgated pursuant to HSWA, does not apply to mixed waste in a State with RCRA-base program authorization until the State revises its program and receives authorization for mixed waste. This is because the TC only applies to material included in the definition of "solid waste," which is part of the authorized RCRA-base program. As noted above, the definition of "solid waste," upon which HSWA requirements depend, is determined solely by State law in authorized States. Therefore, in scenarios 1 and 2 described in the background section above, new HSWA requirements such as the

land disposal restrictions and the TC would apply to mixed wastes. In scenario 3, however, new HSWA requirements like the TC would not apply to mixed wastes until the State becomes authorized for these wastes.

#### Current Regulatory Status of Mixed Waste

Currently, mixed waste is regulated as a Subtitle C solid and hazardous waste in 33 States and territories (24 States and territories have received authorization for mixed waste, 9 States and territories are unauthorized even for a RCRA-base program).

In these 33 States, mixed waste is subject to the TC (scenarios 1 and 2 above), and EPA administers and enforces the program for toxicity characteristic mixed waste until the State receives authorization for the TC program. In the remaining States and territories, which have only RCRA-base program authorization (scenario 3), mixed waste is not now a solid waste according to the Federal hazardous waste management requirements, and this waste is not subject to the TC. A list of States and territories with mixed waste authorization as of January 31, 1991, is provided in Attachment 3.

The effective date of the TC rule was September 25, 1990 for large quantity generators and treatment, storage, and disposal facilities and March 29, 1991 for small quantity generators. The key compliance dates for the TC rule, including requirements for Section 3010 notification, submission of permit applications (Part A's and B's), and permit modifications are summarized in Attachment 4. These compliance dates apply to facilities which handle toxicity characteristic mixed waste in States which have mixed waste authorization and in states which have not yet received RCRA-base program authorization.

In States which have only RCRA-base program authorization, mixed waste is not subject to the Federal hazardous waste regulations until the State becomes authorized for mixed waste. Once a RCRA-base authorized State becomes authorized for mixed waste, facilities in that State will be required to submit a Part A permit application, amended Part A permit application, or permit modification for TC wastes as well as other hazardous waste no later than six months after the effective date of the State's mixed waste authorization. In this type of situation, a Section 3010 notice would not be required for newly regulated

generators and treatment, storage, and disposal facilities. However, newly regulated generators and treatment, storage, and disposal facilities are required to obtain an EPA identification number, following the authorized State's procedures.

If you have additional questions regarding this matter, please feel free to contact Jared Flood of my staff at FTS: 475-7066. If you have questions about other specific issues related to the TC, please contact Steve Cochran of my staff at FTS: 382-4769.

Attachments