

1. Storage of Mixed Waste in Violation of RCRA §3004(j) Storage Prohibition

RCRA §3004(j) prohibits the storage of any prohibited hazardous waste, including radioactive mixed waste, except for the purpose of accumulating quantities necessary to facilitate proper waste recovery, treatment, or disposal (§268.50). A “prohibited” hazardous waste is a waste ineligible for land disposal unless it meets the land disposal restrictions treatment standards found in §268.40 and is currently subject to those standards. EPA has concluded that when no viable treatment for the waste exists, storage of a waste pending development of such treatment technology does not “constitute storage to accumulate sufficient quantities to facilitate proper treatment or disposal” (61 FR 18588; April 26, 1996). While the Federal Facility Compliance Act of 1992 (FFCA) did exempt certain Department of Energy (DOE) facilities storing mixed waste from §3004(j), it did not exclude non-DOE and commercial facilities. How does EPA enforce the RCRA §3004(j) storage prohibition at non-DOE and commercial facilities currently storing mixed waste in violation of this provision?

In response to the current lack of treatment and disposal capacity for mixed waste, EPA has established an enforcement policy for facilities storing mixed waste in violation of the RCRA §3004(j) storage prohibition (56 FR 42730; August 29, 1991). The policy states that commercial facilities storing mixed waste in violation of §3004(j) due to a lack of available treatment or disposal capacity are considered by EPA to be a reduced or low priority among potential civil enforcement actions as long as the waste is managed in an environmentally responsible manner. The enforcement policy applies only to those facilities generating small amounts of mixed waste. EPA believes a facility is managing its mixed waste in an environmentally responsible manner when it can demonstrate that it has: conducted an inventory of the facility’s mixed waste storage areas to assess and assure compliance with all other applicable RCRA storage standards; identified and maintained records of all mixed wastes generated; developed and implemented, where feasible, a mixed waste minimization plan; and documented good faith efforts to find available treatment technologies and disposal capacity for its stored mixed waste. The enforcement policy does not apply to prohibited mixed wastes for which treatment technology or disposal capacity exists, or becomes available prior to April 1998.

EPA’s primary enforcement concern is with violations of §3004(j) by generators who are storing mixed wastes for which treatment or disposal capacity is

available, or who are not managing their waste in an environmentally responsible manner. It is important to note that the enforcement policy applies only to civil judicial and administrative enforcement, and does not extend to criminal violations of RCRA, for which the U.S. Attorney General has sole prosecutorial discretion.

The original enforcement policy was scheduled to terminate on December 31, 1993, with the provision that EPA may renew it beyond 1993 if necessary. Since that time, EPA has extended the enforcement policy twice. The first extension, in 1994, extended the policy for two years, until April 20, 1996 (59 FR 18813; April 20, 1994). This extension did not apply to executive branch federal facilities, as these facilities were still eligible for the FFCA's three-year delay of the waiver of sovereign immunity. The Second extension came in 1996 and set the expiration date of April 20, 1998 (61 FR 18588; April 26, 1996). Since the FFCA three-year delay has expired, the enforcement policy now applies to executive branch federal facilities other than DOE and joint Navy/DOE Naval Nuclear Propulsion Program (NNPP) facilities.