United States Environmental Protection Agency

Office of Solid Waste and Emergency Response

EPA

DIRECTIVE NUMBER: 9434.00-2

TITLE: Applicability of RCRA to Department of Energy Facilities

APPROVAL DATE: 05-01-85

EFFECTIVE DATE: 05-01-85

ORIGINATING OFFICE: Office of Solid Waste

☒ **FINAL**

☐ **DRAFT**

STATUS:
[ ] A- Pending OMB approval
[ ] B- Pending AA-OSWER approval
[ ] C- For review &/or comment
[ ] D- In development or circulating headquarters

REFERENCE (other documents):

OSWER OSWER OSWER

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EPA

United States Environmental Protection Agency
Washington, DC 20460

OSWER Directive Initiation Request

1. Directive Number: 9434.00-2

2. Originator Information

Name of Contact Person	Mail Code	Office	Telephone Code
George Garland	WH-563	OSW	(202) 382-2210

3. Title
Applicability of RCRA to Department of Energy Facilities

4. Summary of Directive (include brief statement of purpose)
Provides information and guidance on the applicability of RCRA to the regulation mixed wastes at DOE facilities.

5. Keywords
Mixed Waste/Federal Agency/Federal Facility

5a. Does This Directive Supersede Previous Directive(s)? [X] No [ ] Yes What directive (number, title)

b. Does It Supplement Previous Directive(s)? [X] No [ ] Yes What directive (number, title)

7. Draft Level
[ ] A – Signed by AA/DAA [ ] B – Signed by Office Director [ ] C – For Review & Comment [ ] D – In Development

8. Document to be distributed to States by Headquarters? [ ] Yes [X] No

This Request Meets OSWER Directives System Format Standards.

9. Signature of Lead Office Directives Coordinator	Date
10. Name and Title of Approving Official	**Date**
John H. Skinner, Director, OSW	05-01-85

EPA Form 1315-17 (Rev. 5-87) Previous editions are obsolete.

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MAY 1 1985

MEMORANDUM

SUBJECT: Applicability of RCRA to Department of Energy Facilities

FROM: John H. Skinner
Director
Office of Solid Waste (WH-562)

TO: Directors, Hazardous Waste Division
Regions I-X

This memorandum will provide you with information on three issues related to the applicability of RCRA to Department of Energy (DOE) facilities. First, I want to update you on the status of our negotiations with DOE. Second, I want to provide guidance as to how the Agency will treat DOE facilities, both for the present and in the future. Last, I want to provide some information and guidance on what we will be expecting of the States and how we will be judging their programs, relative to DOE, for purposes of authorization.

We are continuing to negotiate and define with DOE [redacted] the legal and technical parameters under which the two agencies will operate. As a result of the U.S. District Court decision regarding DOE's Y-12 facility in Tennessee and the subsequent acceptance by DOE that the Court's decision would apply to all DOE's facilities, both agencies have agreed that RCRA applies to DOE facilities for both hazardous wastes and certain radioactive mixed wastes. We are currently developing policy and drafting regulations and guidance that will formalize our operations.

Three joint EPA-DOE committees have been formed to establish this policy. The first committee is a policy committee to write and interpret regulations, including the legal definition of source, special nuclear, and byproduct wastes. The second committee is looking at the technical application of the regulations. The third committee is discussing security issues, especially [redacted] required to inspect handlers and to review data [redacted] ons that are developed as a result of these com[redacted]ations will be incorporated in revisions

to 40 CFR Parts 124, 260-265, 271 and 10 CFR Part 692. The revisions should include a working definition of "byproduct material," procedures for review and approval of variances (e.g., exemption from reporting certain waste analyses), procedures for the handling of classified information, and requirements for State programs.

In addition to establishing regulatory requirements for State authorization, EPA may assume a limited role in mediating disputes between DOE and an authorized State. Upon the request of either DOE or an authorized State, EPA might issue an advisory opinion as to whether the application of particular State hazardous waste regulations is inconsistent with the Atomic Energy Act. The opinion would not bind either party. However, if DOE and the State are unable to resolve their differences and must seek a legal remedy, a court could consider EPA's opinion in rendering a decision, whether that opinion favored the State or DOE.

Let me turn to the second point of this memorandum--treatment of DOE facilities. Both DOE and EPA consider the February 22, 1984, Memorandum of Agreement to be no longer in effect. No Hazardous Waste Compliance Plans will be issued. All DOE facilities are required to obtain a RCRA permit for certain RCRA regulated mixed wastes as well as for their hazardous wastes. Until we promulgate new regulations defining mixed wastes and establishing the standards for DOE handlers, we recommend that permits be issued for all wastes which exhibit a characteristic or are listed, and those mixed wastes which are clearly RCRA wastes, i.e., where DOE agrees that a particular mixed waste is subject to RCRA. Thus, where EPA is the permitting authority, we can add conditions at a later date for handling any subsequently defined mixed wastes. The Agency need not defer all action on DOE permits pending promulgation of the regulations.

You should also be following the same protocol and schedule for inspecting DOE handlers as you do now for all hazardous waste handlers. Keep in mind that starting in November 1985, Federal facilities must be inspected by EPA on an annual basis as required by the Hazardous and Solid Waste Amendments of 1984. Security clearances may be needed for individuals performing these inspections. If the inspection documents the presence of one or more Class I violations, a Notice of Violation/Compliance Demand (NOV/CD) should be developed, which recites for the record all violations present at the handler, specifies in detail the necessary remedies for each and establishes a reasonable implementation schedule. The NOV/CD should be accompanied by a cover letter that advises the handler of its options for response and specifically allows it to reach consensual settlement of the case. This would be accomplished by the handler agreeing in

writing, within ten days of receipt of the NOV/CD to implement the remedies as indicated in the schedule. The NOV/CD is still effective upon receipt, notwithstanding any efforts to resolve the case through the consent mechanism. Thirty days should be provided in the NOV/CD to reach a negotiated settlement before moving ahead with an administrative order.

Failing that, you should work with your Region's Federal Facilities Coordinator and also notify us of your problems. Headquarters involvement may not be appropriate, but we would like to remain informed of any difficulties. Where it is appropriate, Tony Baney of the Office of Waste Programs Enforcement should be informed, as well as OSW's Federal Facilities Coordinator, Andrea Pearl who will work with EPA's Office of Federal Activities and DOE Headquarters' staff to try to facilitate a resolution. Tony's number is FTS 475-6173 and Andrea's number is FTS 382-2210.

We will also continue, for the time being, to follow the policy outlined in Lee Thomas' February 21, 1984, memorandum to Ernesta Barnes (copy attached) regarding the applicability of States' regulations to DOE facilities. That is, States do not have to regulate mixed waste at the present time as an authorization requirement. A State may indeed regulate such wastes under State law; however, under RCRA, States cannot yet receive authorization to do so. We intend to publish a Federal Register notice describing our interpretation of the radioactive waste exclusion. At such time, States will be required to obtain authorization for an equivalent provision by amending their programs, where necessary. Where amendment is not necessary, a certification from the Attorney General will be required. The time frames contained in 40 CFR §271.21(e) will apply.

In the meantime, where a State has legal authority over RCRA-exempted mixed wastes, such State is not authorized to issue RCRA permits to facilities which handle those mixed wastes. State-imposed requirements which are beyond the scope of the Federal program (such as the management of these mixed wastes as hazardous) are not part of the Federally approved RCRA program. It should be noted that in an authorized State, EPA also cannot issue permits for handling such mixed wastes. Section 3006(c)(4) of the Hazardous and Solid Waste Amendments of 1984 allows joint Federal-State permits to be issued where a State is not yet authorized for a particular new requirement of the Amendments. However, the mixed waste issue is not addressed in the Amendments and, therefore, that provision is inapplicable.

I hope this discussion has been helpful. We will be keeping you informed as we progress. In the meantime, I would urge you to begin making the States aware of our plans.

Attachment

cc: Hazardous Waste Branch Chiefs, Regions I-X
Federal Facilities Coordinators, Regions I-X
Jack McGraw
Gene Lucero
Mike Cook
John Lehman
Eileen Claussen
Lisa Friedman
Lee Herwig