



DIRECTIVE NUMBER: 9432.01(84)

TITLE: Determination of Operator at the DOE Oak Ridge Facility

APPROVAL DATE: 1-27-84

EFFECTIVE DATE: 1-27-84

ORIGINATING OFFICE: OSW

☒ **FINAL**

☐ **DRAFT**

LEVEL OF DRAFT

- ☐ A — Signed by AA or DAA
- ☐ B — Signed by Office Director
- ☐ C — Review & Comment

REFERENCE (other documents):

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Key Words: Federal Facilities

Regulations: 40 CFR 260.10

Subject: Determination of Operator at the DOE Oak Ridge Facility

Addressee: James H. Scarbrough, Chief, Residuals Management Branch, Region IV

Originator: Bruce R. Weddle, Acting Director, Permits and State Programs
Division

Source Doc: #9432.01(84)

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Summary:

A Regional office should decide who should be considered the operator of a facility, based on application of the definition of "operator" in §260.10. In making this decision, the Region should consider the role of the contractor in making major decisions. If the contractor has considerable autonomy to make major decisions without DOE involvement, then the contractor could be considered the operator. If DOE retains responsibility for major decisions, then DOE could be considered the operator.

JAN 27 1981

MEMORANDUM

SUBJECT: Determination of Operator at the DOE Oak Ridge Facility

FROM: Bruce R. Weddle, Acting Director
Permits and State Programs Division (WH-563)

TO: James H. Scarbrough, Chief
Residuals Management Branch
Region IV

I am writing in response to your letter of December 30 regarding who should be the operator in the pending permit for the DOE facility at Oak Ridge, Tennessee. My staff has been in contact with your staff and other HQ offices concerning the issues in this case. It is my understanding that the Office of General Counsel has requested copies of the permit and related documents and has asked your Office of Regional Counsel to delay any decisions in this matter until OGC has reviewed these documents. You should also be advised that the generic issue of contractors serving as RCRA permittees has been raised in the negotiations between EPA and DOE Headquarters. We will let you know of any developments in these negotiations and we urge you to keep us advised of developments in the Oak Ridge case.

I have two general comments at this time regarding the Oak Ridge operator issue.

First, the decision as to which party should be the operator in the permit should be made by the Regional Office, based on application of the definition of "operator" in §260.10. As general guidance in such determinations, I suggest that you consider the role of the contractor in making major decisions at the facility. If the contractor has considerable autonomy to make such decisions without DOE involvement, then the contractor could be considered the operator. If on the other hand, DOE retains responsibility for major decisions, then DOE could be considered the operator. Obviously, there will be cases where the contractor's responsibility is less precisely defined; in those cases, the Region should exercise judgement given the factual situation. (OGC may have additional guidance in this area following their review of the Oak Ridge situation. In particular, OGC will examine the contract language and site management practices at Oak Ridge in respect to the §260.10 definition.)

Second, your letter states that the Region may deny the DOE permit if the disagreement with DOE is not resolved. I suggest that you consider, instead, making a determination as to who is the "operator" and issuing the permit. (This assumes that the application demonstrates compliance with RCRA and is signed by the proper owner and operator.) If the permittee objects to permit conditions, he may appeal those conditions. But I'm not sure whether there are grounds to deny the permit and I doubt that such an action would help resolve the larger questions. (Again, OGC may have some suggestions in this regard as well.)

Please let me know if we can provide additional assistance on this issue.

cc: Gene Lucero
 Peter Guerrero
 Terry Grojan
 Elizabeth Cotsworth
 Susan Schmedes (OGC)
 Tony Baney (OWPS)
 Sandy Williams (OPA)

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