



Department of Energy

9300294

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93-SWT-027

Mr. Paul T. Day
Hanford Project Manager
U. S. Environmental Protection Agency
712 Swift Boulevard, Suite 5
Richland, Washington 99352

Mr. David B. Jansen, P.E.
Hanford Project Manager
State of Washington
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600



Dear Messrs. Day and Jansen:

IMPACT OF PLAN REQUIREMENTS OF THE FEDERAL FACILITIES COMPLIANCE ACT,
PL 102-386, AT THE HANFORD SITE

PL 102-386 requires most U.S. Department of Energy (DOE) facilities to prepare a Plan for Development of Treatment Technologies for transmission to the Governor of the host state. The Richland Field Office (RL) has reviewed the Federal Facilities Compliance Act, and has determined that the site specific plan requirement in section 105(b) does not apply to Hanford because the 1990 amendments to the Hanford Federal Facility Compliance Agreement and Consent Order (Tri-Party Agreement) established a site specific agreement for achieving compliance with mixed waste storage and treatment requirements. The attachment to this letter provides further clarification. Therefore, RL does not presently contemplate submitting a plan separate from the M-26 Milestone established by the Tri-Party Agreement 1990 amendments. Information on mixed waste at RL, however, will be contained in the Inventory report as provided for in section 105(a) of the Act.

RL requests that you indicate whether the above policy is consistent with your agency's interpretation of PL 102-386.



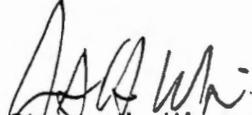
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Please direct any questions that you may have on this subject to
D. W. Claussen of the Waste Management Division on 372-0938.

Sincerely,


Steven H. Wisness
Hanford Project Manager

WMD:RFG

Attachment

cc w/att:
J. O. Skolrud, WHC
J. O. Boda, EM-322

February 4, 1993

TO: R. Carosino

FROM: E. Hiskes

RE: Applicability of Federal Facility Compliance Act §105(a) Mixed Waste Plan requirement to Hanford.

Background

§105(a) adds a new section to the Solid Waste Disposal Act, i.e. §3021, "Mixed Waste Inventory Reports and Plan". §3021(b)(1)(a)(i) requires that the Secretary of Energy prepare a mixed treatment plan concerning all DOE facilities which generate or store mixed waste, except for such facilities as are currently covered by a permit, agreement, or order of the type defined in clause §3021(b)(1)(a)(ii). According to this latter clause, a required plan need not cover any facility currently "*subject to any permit establishing a schedule for treatment of such wastes, or any existing agreement or administrative or judicial order governing the treatment of such wastes, to which the State is a party.*"

Issue

Is the Hanford Facility Agreement and Consent Order (The Tri-Party Agreement, TPA) an "*existing agreement or administrative or judicial order governing the treatment of such wastes, to which the State is a party within the meaning of clause (ii), such that the Secretary need not submit a plan which addresses Hanford mixed wastes?*"

Discussion

The State of Washington is a party to the TPA, and the TPA is cast in the form of both an agreement and an administrative consent order between DOE, EPA, and the Department of Ecology of the State of Washington. Moreover, this agreement and order was "existing" as of the effective date of §3021(b)(1)(a)(i). So only one issue remains: Does the TPA "govern" the treatment of the wastes with which a Mixed Waste Plan would otherwise need to be prepared?

Mixed Wastes are defined in the TPA (page 15) as wastes that contain both hazardous waste subject to RCRA and radioactive waste subject to the Atomic Energy act of 1954. Page 7 of the TPA states that the purpose of the TPA is to "ensure that environmental impacts associated with past and present activities at the Hanford site are thoroughly investigated and appropriate response action taken.." Another purpose, also stated on page 7, is to insure compliance with RCRA and the Washington State Hazardous Waste Management

Act. Thus, the TPA purports to cover (1) the entire Hanford Site; and (2) all hazardous waste activities on the site. Since mixed waste is a subset of hazardous waste, it would thus appear that the TPA "governs" all mixed waste on the Hanford Site.

This analysis applies with double force to LDR restricted mixed wastes, since these are subject to a special TPA milestone. The first amendment to the TPA, effective September 24, 1990, incorporated milestone M-26-00, which required the preparation of the "Hanford Land Disposal Restriction Plan for Mixed Wastes". (TPA First Amendment, at page 7). According to the Amended TPA, "This plan will describe a process for managing mixed wastes subject to the LDR (i.e. Land Disposal Restrictions) at the Hanford Site and will identify actions which will be taken by DOE to achieve full compliance with the LDR requirements". (TPA First Amendment, at page 9).

Thus, with respect to LDR mixed wastes at Hanford there is a special provision in the TPA which "governs" treatment, in addition to the general provisions covering other mixed wastes.

Conclusion

There is a provision in the TPA that addresses directly the treatment of mixed wastes to satisfy the LDR requirements. Thus, mixed wastes at Hanford are subject to an "*existing agreement or administrative or judicial order governing the treatment of mixed wastes*", within the meaning of §3021(b)(1)(a)(i). Accordingly, the Secretary need not submit a plan for the treatment of mixed wastes at Hanford pursuant to §105(a) of the Federal Facilities Compliance Act.

CORRESPONDENCE DISTRIBUTION COVERSHEET

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Subject: IMPACT OF PLAN REQUIREMENTS OF THE FEDERAL FACILITIES COMPLIANCE ACT, PL 102-386, AT THE HANFORD SITE

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