Chittenden Cos., VT, Due: April 15, 1989, Contact: Ralph Abele, Jr. (617) 965-5100.
Published FR 11-13-87—Review period extended.

EIS No. 880152, Draft, USA, PRO, NAT, Nationwide Biological Defense Research Program, Continuation, Implementation, Due: October 4, 1988, Contact: Charles Dasey (301) 663-2732. Published FR 5-20-88-Review period extended.

EIS No. 880287, DSuppl, AFS, OR, ID, Wallowa Whitman National Forest, Land and Resources Management Plan, Additional Alternative, Implementation, Baker, Union, Wallowa, Grant, Malheur and Umatilla Counties, OR and Adams, Nez Perce and Idaho Counties, ID, Due: December 12, 1988, Contact: Bruce McMillan (503) 523-6319.
Published FR 9 9-88—Review period extended, incorrect date published in 9-9-88 FR.

Dated: September 20, 1988.
William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 88-21862 Filed 9-22-88; 8:45 am]
BILLING CODE 5560-50-M

[FRL-3452-6]

Clarification of Interim Status Qualification Requirements for the Hazardous Components of Radioactive Mixed Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification notice.

SUMMARY: The Environmental Protection Agency (EPA) is today publishing a notice which clarifies requirements for facilities that treat, store or dispose of radioactive mixed waste to obtain interim status pursuant to Subtitle C of the Resource Conservation and Recovery Act (RCRA). Radioactive mixed wastes are wastes that contain both hazardous waste subject to RCRA and radioctive waste subject to the Atomic Energy Act (AEA). Additionally, this notice addresses "notification" requirements for handlers of radioactive mixed waste.

DATE: Owners and operators of facilities treating, storing, or disposing of radioactive mixed waste in States not authorized by September 23, 1988 to administer the Federal hazardous waste program in lieu of EPA must submit a RCRA Part A permit application to EPA by March 23, 1989 to qualify for interim status. Facilities treating, storing or disposing of radioactive mixed waste in States that received authorizatioin by September 23, 1988 are not subject to RCRA regulations until the State revises its existing authorized hazardous waste program to include authority to regulate radioactive mixed waste. Owners and operators must then comply with applicable State requirements regarding interim status.

To date, four States (i.e., Colorado, South Carolina, Tennessee, and Washington) have been authorized to regulate radioactive mixed wastes. In those States, owners and operators must comply with the applicable State law governing interim status for radioactive mixed waste facilities if it is more stringent than the otherwise applicable provisions of this notice.

FOR FURTHER INFORMATION CONTACT: Betty Shackleford, Office of Solid Waste (WH-563B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2221.

SUPPLEMENTARY INFORMATION:

A. Background

In 1976, the Resource Conservation and Recovery Act (RCRA) as amended, was passed to provide for development and implementation of a comprehensive program to protect human health and the environment from the improper management of hazardous waste. Specifically, Subtitle C of RCRA creates a managment system intended to ensure that hazardous waste is safely handled from the point of generation to final disposal. To acomplish this, Subtitle C requires the Agency first to define and characterize hazardous waste. Second, a hazardous waste manifest system was implemented to track the movement of hazardous waste from the point of generation to ultimate disposal. Hazardous waste generators and transporters must employ appropriate management practices and procedures to ensure the effective operation of the manifest system. Third, owners and operators of treatment, storage or disposal facilities (TSDF's) must comply with standards the Agency established under section 3004 of RCRA that "may be necesary to protect human health and the environment." These standards are implemented exclusively through permits issued to TSDF owners and operators by the Agency or authorized States. Until final permits are issued, treatment, storage, and disposal facilities must comply with the interim status regulations found in 40 CFR Part 265, which were promulgatd mostly on May 19, 1980.

Under RCRA interim status, the owner or operator of a TSDF may operate without a final permit if: (1) The facility existed on November 19, 1980 (or existed on the effective date of statutory or regulatory changes under RCRA that render the facility subject to the requirements to have a permit under section 3005); (2) the owner or operator complies with the notification requirements of section 3010 of RCRA; and (3) the owner or operator submits a RCRA Part A permit application (40 CFR 270.70). Interim status is retained until the Agency or authorized State makes a formal decision to issue or deny the final TSDF permit.

As provided by section 3006(b) of RCRA, States may apply to EPA for authorization to administer and enforce a hazardous waste program pursuant to Subtitle C of RCRA. Authorized State programs are carried out in lieu of EPA. To date, forty-four States have received final authorization to administer the basic hazardous waste program. Of these forty-four States, only four (i.e., Colorado, South Carolina, Tennessee, and Washington) have received the additional authorization needed to regulate radioactive mixed waste. In these States, which had base program authorization by July 3, 1986, the State's regulations on interim status for mixed waste facilities control.

The other forty States with base program authorization must still revise their existing programs to include authority to regulate the hazardous component of radioactive mixed waste. In the twelve States and trust territories (i.e., Alaska, American Samoa, California, Connecticut, Hawaii, Idaho, Iowa, Marianna Islands, Ohio, Puerto Rico, Virgin Islands, and Wyoming) *unauthorized* to carry out their own RCRA hazardous waste program, radioactive mixed waste is subject to Federal hazardous waste regulations administered by EPA.

Historically, substantial confusion and uncertainty have surrounded the applicability of RCRA to hazardous wastes containing certain radioactive materials (i.e., source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923)). This uncertainty stemmed, to a large extent, from the exclusion of source, special nuclear and byproduct material from the definition of solid waste under section 1004(27) of RCRA.

To clarify State responsibilities with regard to the hazedous components of radioactive mixed waste, the EPA published a notice in the Federal Register of July 3, 1986 (51 FR 24504). That notice recognized that States had not previously been authorized under RCRA to regulate radioactive mixed waste because of continuing debate surrounding the extent of RCRA jurisdiction over this category of waste.

Through that notice, EPA clarified its position that the hazardous component(s) of mixed waste was subject to RCRA regulation. Accordingly, States were required to revise their existing hazardous waste programs and apply for RCRA authorization to regulate radioactive mixed waste in accordance with the deadlines set forth in the July 3, 1986 notice. Similarly, such authority must now be sought by States initially submitting an application for RCRA final authorization.

Since publication of the July 3, 1986 notice, the Agency promulgated new deadlines for State hazardous waste program modifications (the "Cluster Rule," September 22, 1986, 51 FR 33712). This subsequent rulemaking established annual deadlines for States to submit program changes in groups or clusters when seeking Agency authorization. For State program changes occurring after June 1984, the groups or clusters were to correspond to successive twelve-month periods beginning each July 1 and ending June 30 of the following year. In accordance with the schedule established by the Cluster Rule, States which applied for final authorization before July 3, 1986 were required to revise existing hazardous waste programs to include the authority to regulate the hazardous component of radioactive mixed waste by July 1, 1988 (or by July 1, 1989 if a statutory amendment is necessary). States initially seeking final authorization after July 3, 1987 were required to seek authorization for radioactive mixed waste as part of their application for final authorization. Any State applying for HSWA corrective action must concurrently seek authority for radioactive mixed waste. The July 3, 1986 notice addressing RCRA's applicability to TSDF's handling radioactive mixed waste did not, however, address the issue of interim status.

B. Clarification of the Definition of Byproduct Material

At the same time that EPA's rules governing State programs for radioactive mixed waste were being developed and implemented, controversy arose over which wastes are mixed and therefore subject to RCRA and which wastes are pure "byproduct material" and therefore exempt from RCRA regulations as provided by section 1004(27). To delineate RCRA applicability to their byproduct material waste streams, the Department of Energy (DOE) issued an interpretive rule on May 1, 1987 (52 FR 15937). In that rule DOE stated that the term byproduct material as it applies to DOE-owned wastes (i.e., any radioactive material except special nuclear material yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material) refers only to the actual radionuclides dispersed or suspended in the waste substance. That interpretation is consistent with the position issued on January 8, 1987 by the EPA and the Nuclear Regulatory Commission (NRC) in a document entitled "Guidance on the Definition and Identification of Commercial Mixed Low-Level Radioactive and Hazardous Waste and Answers to Anticipated Questions." Therefore, as DOE clarified in its May 1, 1987 byproduct rule, any matrix containing a RCRA hazardous waste as defined in 40 CFR 261 and a radioactive waste subject to the AEA is a radioactive mixed waste. Such wastes are subject to RCRA hazardous waste regulations regardless of further subclassification of the radioactive waste constituent as high-level, low-level, transuranic, etc.

C. Interim Status

As discussed previously, RCRA section 3005(a) prohibits treatment, storage, or disposal of hazardous waste without a permit after November 19, 1980. However, section 3005(e) of RCRA provides that facilities in existence on November 19, 1980 or on the date of statutory or regulatory changes which subject the facility to RCRA requirements, may continue treatment, storage, or disposal under "interim status" pending a final decision on its permit application.[1] To qualify for interim status under section 3005(e), the owner or operator of a TSDF in existence must submit a Part A permit application and meet applicable notification requirements under section 3010 of RCRA.

EPA has become aware that many TSDF's handling radioactive mixed waste, both in authorized and unauthorized States (EPA-administered hazardous waste programs), have been substantially confused about the regulatory status of their particular mix of hazardous waste. Further, these owners and operators are uncertain about how to qualify for interim status if they are handling radioactive mixed waste.

The July 3, 1986 notice addressing RCRA's applicability to TSDF's handling radioactive mixed waste did not address the issue of interim status. Given that omission and subsequent definitional clarifications on which radioactive waste streams are subject to RCRA regulation, EPA has determined that substantial confusion about interim status requirements existed. The primary purpose of this notice, therefore, is to clarify RCRA interim status requirements with respect to TSDF's managing radioactive mixed waste. The requirements are discussed below.

1. Requirement That Facilities Be "in Existence"

Interim status provides temporary authorization to continue hazardous waste management activities at facilities engaging in such activities at the time that they first become subject to RCRA regulation. Without interim status, the activities would have to cease until a permit application was filed and reviewed and final permit issued.

One of the conditions for qualifying for interim status under section 3005(e) is that the facility be "in existence" either on November 19, 1980 or on the date of the regulatory or statutory change which first subjects the facility to RCRA permitting requirements. Under EPA regulations at 40 CFR 260.10 and 270.2, to be "in existence" (i.e., to be an existing hazardous waste management facility or existing facility) means that the facility is either operating or construction of such a facility has commenced on the relevant date.

As applied to facilities handling radioactive mixed waste in States unauthorized to implement a hazardous waste program (i.e., without base program authorization) as of the date of this notice, EPA believes that facilities in operation or under construction as radioactive mixed waste treatment, storage, or disposal facilities on July 3, 1986 may qualify for interim status under section 3005(e)(1)(A)(ii) of RCRA. The Agency interprets this provision as applying to such facilities in existence on July 3, 1986 because the July 3, 1986 notice was EPA's first official pronouncement to the general public that RCRA permitting requirements are applicable to radioactive mixed waste. In view of the level of confusion surrounding regulation of radioactive mixed waste prior to that time, EPA will treat the July 3, 1986 notice as the relevant regulatory change for establishing that facilities in existence

[1] However, if a *facility* has previously had its interim status terminated, the facility is barred by statute from qualifying for interim status for a newly listed waste (RCRA section 3005(e)(1)). If only certain *units* at the facility have previously had interim status terminated, then the facility may operate newly-regulated units under interim status (see 40 CFR 270.72).

on that date may qualify for interim status if other applicable requirements are met.

Facilities treating, storing, or disposing of radioactive mixed waste but not other hazardous waste in a State with base program authorization are not subject to RCRA regulation until the State program is revised and authorized to issue RCRA permits for radioactive mixed waste. The effective date of the State's receipt of radioactive mixed waste regulatory authorization from EPA will therefore be the regulatory change that subjects these TSDF's to RCRA permitting requirements. Any facility treating, storing, or disposing of radioactive mixed waste, or any such facility at which construction commenced by the effective date of authorization for the State's radioactive mixed waste program revision may qualify for interim status if the other requirements described below are met. However, owners and operators of TSDF's in authorized States are subject to all applicable State laws. A State can establish its own date for qualifying for interim status but, in order to be no less stringent than the Federal program, that date *may not* be after the effective date of EPA's authorization to the State to regulate radioactive mixed waste.

Some facilities in States with base program authorization as of July 3, 1986 may already have interim status under RCRA because they handle other RCRA hazardous wastes. These facilities should submit a revised Part A permit application reflecting their radioactive mixed waste activities within six months of the State's receipt of authorization for radioactive mixed waste.

2. Requirements to File a Permit Application

To qualify for interim status under RCRA section 3005(e) (1), the owner or operator of an "existing" facility must submit a Part A permit application. Under 40 CFR 270.10(e), existing facilities in *unauthorized* States must submit Part A of their permit application no later than six months after the date of "publication or regulations" which first require them to comply with technical standards, or thirty days after they first become subject to the technical standards, whichever is first. Although the July 3, 1986 notice clarified RCRA jurisdiction over radioactive mixed waste, it specifically addressed only the issue of State authorization. Application of the time periods specified in 40 CFR 270.10(e) to facilities located in unauthorized States was not addressed. Furthermore, the July 3, 1986 notice was technically not a regulation, which is the trigger for § 270.10(e) in normal circumstances. As a result, owners and operators in unauthorized States could legitimately have been confused as to whether (and when) they were required to submit a Part A permit application. Under § 270.10(e)(2), EPA finds that the confusion is substantial and is attributable primarily to (1) ambiguities surrounding the 40 CFR parts 260–265 regulatory status of mixed waste, (2) the narrow scope of the July 3, 1986 notice and (3) uncertainty regarding DOE's final definition of byproduct material which had direct bearing on RCRA applicability to Federally-owned radioactive mixed wastes and indirect bearing on commercial radioactive mixed wastes.

EPA, therefore, is exercising its authority today under § 270.10(e)(2) to extend the Part A permit application filing dates for owners and operators of facilities handling radioactive mixed waste in unauthorized States. Owners and operators of radioactive mixed waste facilities in operation or under construction as of July 3, 1986 (See 45 FR 33066, May 19, 1980) in unauthorized States must submit RCRA Part A permit applications or modifications within six months of the date of publication of today's notice to qualify for interim status. This is predicated on the Agency's determination that the time periods specified in § 270.10(e) are triggered as of the date of publication of this notice given the circumstances presented herein. It should be noted, however, that radioactive mixed waste land disposal facilities must also submit a final (Part B) permit application and certification of compliance with applicable ground-water monitoring and financial assurance requirements within twelve months from the date of this notice pursuant to section 3005(e)(3) of RCRA. Failure to do so may result in loss of interim status for the affected units and possibly for the facility. Facilities other than land disposal must submit Part B of the permit application in accordance with deadlines established by the EPA Regional Office.

Mixed waste TSDF's in States with base program authorization must comply with applicable State requirements and deadlines for obtaining interim status as prescribed in authorized State law. Radioactive mixed waste land disposal facilities obtaining interim status in authorized States are nevertheless subject to the section 3005(e)(3) one-year provision on loss of interim status for newly-listed wastes. Thus, the owners or operators of such facilities must submit the State analogue of the Part B permit application and the required certifications within twelve months of the effective date of the State's authorization to regulate radioactive mixed waste. Failure to submit the Part B permit application or the required certifications will result in loss of interim status for the affected units and possibly for the facility. Facilities other than land disposal must submit the Part B permit application in accordance with deadlines established by the authorized State program.

3. Requirement to Comply with Section 3010 Notification

The final condition for obtaining interim status under section 3005(e) of RCRA is notification of hazardous waste activity under section 3010(a) of RCRA. Section 3010(a) requires persons handling hazardous wastes at the time of publication of EPA's initial hazardous waste regulations (on May 19, 1980) to notify EPA of their hazardous waste activity within 90 days (i.e., by August 18, 1980). Section 3010(a) also allows the Administrator discretion on whether to require persons to provide such notification not later than 90 days after promulgation or regulations identifying a substance they handle as hazardous waste thereby providing EPA with a current picture of the hazardous waste universe.

Although many facilities currently treating, storing, or disposing of radioactive mixed waste were doing so in May 1980, EPA believes that the status of radioactive mixed waste was sufficiently unclear that no notification under section 3010(a) was required by August 18, 1980 for facilities handling such waste (See 45 FR 76631–32, November 19, 1980). Nor has notification subsequently been required as part of EPA promulgation of additional RCRA regulations. Therefore, EPA has determined that it is unreasonable to penalize owners and operators of facilities currently handling radioactive mixed waste for any failure to file notification under Section 3010.

Further, EPA finds that TSDF's have "complied with the requirements of section 3010(a)" for purposes of section 3005(e) interim status under 40 CFR 270.70(a)(1). This finding is predicated largely on the fact that radioactive mixed waste will not be subject to hazardous waste regulations in the vast majority of States until they revise their programs to include such authority. These program revisions could take until July 3, 1989 for States needing a statutory amendment. Because notification would be linked to radioactive mixed waste authorization for these States, receipt of this

information would be fragmented. Moreover, the Agency has been aware of the magnitude of the potential radioactive mixed waste universe for some time since each NRC and NRC Agreement State lincensee is a potential handler of radioactive mixed waste. Thus, no further notification of EPA under § 270.70(a)(1) is required in order for facilities treating, storing or disposing of mixed waste to qualify for interim status. However, TSDF owners and operators, like generators and transporters of radioactive mixed waste, must obtain an EPA Identification Number in accordance with the procedures set forth in 40 CFR 263.11 if they do not already have one. The Identification Number may be obtained by completing EPA Notification Form 8700-12 and submitting it to the EPA Regional Office serving the area where the hazardous waste activity is located.

D. Joint Regulation of Radioactive Mixed Waste

As stated previously, a single radioactive mixed waste stream is subject to regulation by two separate Federal agencies (i.e., EPA and NRC, or EPA and DOE). This dual regulatory system requires handlers of waste formerly regulated exclusively by NRC or DOE to also comply with RCRA regulations for hazardous waste management. EPA is committed to minimizing the impact of RCRA regulations by developing a strategy for joint regulation of radioactive mixed wastes that will effect program implementation in the least burdensome manner practicable.

One area of the radioactive mixed waste regulatory process which may lend itself to streamlining occurs when regulatory requirements for hazardous and radioactive waste management are duplicative. When this occurs, compliance with regulations governing radioactive waste management may accomplish a level of environmental protection that may be commensurate with that required under RCRA for hazardous waste management or vice versa. In such instances, EPA will accept, to the extent possible, information already submitted to the NRC when processing the RCRA permit. Moreover, EPA and NRC are assessing the feasibility of developing a joint permitting/licensing guidance that will address these concerns. Suggestions from the regulated community regarding duplicative requirements and simplification of the licensing/permitting process are welcome. Comments should be specific and should document how equivalent protection of human health and the environment from hazardous waste is achieved. The Agency urges States authorized to regulate radioactive mixed waste to adopt a comparable practice when implementing its hazardous waste program.

E. Consistency with the Atomic Energy Act

Publication of the clarification notice addressing RCRA applicability to radioactive mixed waste precipitated a variety of concerns from the regulated community, most of which reflected confusion about the RCRA program. However, two issues were commonly raised, namely, (1) the appropriateness of RCRA hazardous waste regulations for managing waste containing radioactive components and, (2) compliance with RCRA would result in violation of a basic tenet of radioactive waste management, that of keeping radiation exposures as low as reasonably achievable (ALARA).

These concerns prompted the EPA and the NRC to jointly review their respective regulations in an effort to delineate the extent of inconsistencies between EPA's hazardous waste and NRC's radioactive waste management requirements. No inconsistencies were identified as a result of this comparison although RCRA was more prescriptive in some instances and differences in stringency were observed. Differing or more stringent regulations do not necessarily constitute inconsistent requirements. For example, the comparison of container management regulations (See 10 CFR Parts 61 and 71 and 40 CFR Part 264, Subpart I) revealed that they covered different aspects of container management. NRC regulations provide requirements for packaging and placement for land disposal (including the use of fill and liquid-absorbent materials) (See 10 CFR 61.51 and 10 CFR 40-44) while EPA regulations provide prescriptive provisions for the design, use, and inspection of containers at storage facilities and describe how spills from storage areas are to be mitigated. Both agencies have regulations on packaging and waste transport. Here, the regulatory requirements were found to be complementary rather than conflicting.

Although NRC and EPA waste management regulations differ in stringency and scope, the technical requirements were not found to be inconsistent. Section 1006(a) of RCRA precludes any solid or hazardous waste regulation by EPA or a State that is "inconsistent" with the requirements of the AEA. In such instances, the AEA would take precedence and the inconsistent RCRA requirement would be inapplicable.

EPA recognizes that implementation of the dual regulatory program for radioactive mixed waste management might result in instances where compliance with both sets of regulations is not only infeasible but undesirable. Therefore, EPA urges the regulated community to bring to our attention all cases of actual inconsistency which may form the basis for future rulemaking and/or technical or policy guidance.

Dated September 16, 1988.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

[FR Doc. 88-21778 Filed 9-22-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51714; FRL-3452-9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agen[illegible] [illegible]PA).

AC[illegible] [illegible]otice.

SU[illegible] [illegible]: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-eight such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88-1878, 88-1879, 88-1880, November 22, 1988.

P 88-1881, 88-1882, November 23, 1988.

P 88-1883, 88-1884, 88-1885, 88-1886, 88-1887, 88-1888, 88-1889, 88-1890, 88-1891, 88-1892, 88-1893, 88-1894, 88-1895, 88-1896, November 26, 1988.

P 88-1897, 88-1898, 88-1899, 88-1900, 88-1901, 88-1902, 88-1903, 88-1904, 88-1905, 88-1906, 88-1907, 88-1908, 88-1909, 88-1910, 88-1911, November 27, 1988.

P 88-1912, 88-1913, 88-1914, November 28, 1988.

P 88-1915, 88-1916, 88-1917, 88-1918, 88-1919, 88-1920, 88-1921, 88-1922, 88-1923, 88-1924, 88-1925, November 29, 1988.

Written comments by:

P 88-1878, 88-1879, 88-1880, October 23, 1988.

P 88-1881, 88-1882, October 24, 1988.

P 88-1883, 88-1884, 88-1885,