

TRU MANAGEMENT IN THE SITE TREATMENT PLAN AT THE INEEL

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ABSTRACT

The storage of any form of hazardous waste is prohibited unless the waste has available treatment to meet land disposal restriction (LDR) requirements in accordance with 40 CFR 268 of the Resource Conservation and Recovery Act (RCRA). In 1992, Congress passed the Federal Facility Compliance Act (FFCA), which allows for the storage of radioactive and hazardous mixed waste (mixed waste) until available treatment can be developed that meets the LDR requirements. Transuranic-contaminated mixed (TRU) waste is covered under the FFCA through the Site Treatment Plan (STP) since the implementation of the plan in November, 1995.

The Idaho National Engineering and Environmental Laboratory (INEEL) STP required schedules and milestones for the treatment and shipment of TRU waste to the Waste Isolation Pilot Plant (WIPP). Potential enforcement actions for missing compliance milestones exist in the INEEL STP.

After the STP's were entered into, changes in the law brought about by the 1996 Waste Isolation Pilot Plant Land Withdrawal Amendment Act (Amendment Act) provided that "transuranic mixed waste designated by the Secretary [of Energy] for disposal at WIPP" is exempt from LDR requirements. This Amendment Act reversed the LDR treatment requirements for TRU waste under the FFCA provided the TRU waste is "designated" for disposal at WIPP. The State of Idaho, Department of Environmental Quality (State or DEQ) asked DOE to submit enforceable schedules under the STP for transportation of mixed TRU from INEEL to WIPP. Because such waste is no longer considered to be prohibited waste under RCRA, the Department of Energy's position is that they should no longer be subject to the enforceable requirements under the STP. The Department of Energy Idaho Operations Office (DOE-ID) proposed to the State that all TRU waste that was designated for disposal at WIPP be removed from the STP or that any schedules for shipments to WIPP be provided under the processes of the STP for information only.

DOE's position is that the FFCA and STP's only regulate treatment (not transportation and disposal) of wastes; that the DOE has authority to determine how to "designate" wastes destined for WIPP; and that the State and DOE agreed in the STP itself which wastes were "designated" to go to WIPP. In addition, the TRU waste in question is already subject to enforceable schedules under a court order (the Idaho

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Settlement Agreement), and transportation of this waste to WIPP is a top priority of the DOE. Other sites (e.g., SR) have agreed to include unenforceable schedules in the site's STP for wastes designated to go to WIPP.

The State concurred that wastes properly designated for disposal at WIPP were not subject to the LDR requirements but did not concur that all mixed TRU waste currently located at the INEEL had been properly "designated" within the meaning of the Amendment Act. The State also disagreed that these wastes are exempt from the enforceable section of the STP and requested DOE-ID to comply with the appropriate sections of the STP.

Currently, DOE-ID and the State are in negotiation to resolve this issue. The results of this issue may impact other Department of Energy facilities and associated states.

INTRODUCTION

The Federal Facilities Compliance Act (FFCA) required all DOE facilities managing mixed waste to develop Site Treatment Plans (STP) to address mixed waste that are subject to Land Disposal Restrictions (LDR) standards promulgated pursuant to RCRA Section 3004 (m). In 1996 the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Amendment Act states that "transuranic mixed waste designated by the Secretary [of Energy] for disposal at WIPP.... is exempt from treatment standards promulgated pursuant to section 3004 (m) of [RCRA]". Therefore, DOE position is that Transuranic mixed waste destined for WIPP is not subject to, or requires inclusion in, the provisions of the STP.

DOE'S POSITION

As stated before, the FFCA required all mixed waste subject to LDR's and that required storage for longer than one-year be included in the STP. DOE position is that changes in the law provide that wastes designated for disposal at the WIPP are not subject to the LDR. Therefore such wastes should be deleted from the STP.

This position is based in the change in the law brought about by the 1996 WIPP Withdrawal Amendment Act, Section 3100 of Public Law. Originally, section 9 of the 1992 WIPP Withdrawal Act had provided that activities at WIPP would fully comply with hazardous waste and other environmental laws. The Amendment Act revised section 9 to specify that "transuranic mixed waste designated by the Secretary [of Energy] for disposal at WIPP" is exempt from LDR requirements. Because such wastes are no longer considered to be prohibited wastes under the law, they are no longer subject to the requirements of the STP.

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The INEEL STP provides the infrastructure to delete this waste from the STP. DOE-ID requested that the TRU waste destined for disposal at WIPP be deleted from the INEEL STP.

STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) POSITION

While DEQ concurred that waste properly designated for disposal at WIPP are not subject to the LDR restrictions of RCRA, DEQ did not concur that all mixed TRU waste currently located at the INEEL was properly designated within the meaning of the WIPP Withdrawal Act. DEQ also did not agree that such wastes are exempt from the STP of the enforceable schedules found in the STP. Instead DEQ believed that the STP must be complied with until such time as the wastes have been shipped to WIPP.

DEQ interprets the amendments to the WIPP Withdrawal Act to require that a waste acceptance determination be made prior to being removed from the STP. Wastes destined for disposal at WIPP must be designated as such by the STP and information related to interim storage and transport to WIPP is provided. For wastes that have not yet been identified in the STP as going to WIPP, these wastes must stay in the relevant portion of the STP, even if they may eventually be so designated. Finally, DEQ requested that before removal from the enforceable STP schedules, all wastes listed in the STP as TRU waste must be shown to meet the Waste Acceptance Criteria (WAC) at WIPP. This would satisfy DEQ that these wastes would indeed be accepted at WIPP.

DOE/DEQ NEGOTIATIONS

Several written correspondences were submitted back and forth between DEQ and DOE. Based on the position of DEQ, DOE responded with a position paper detailing portions of the WIPP withdrawal Act where DEQ and DOE agreed and disagreed. At this time there are two positions, out of three, on the table being discussed. These positions are: 1) That all TRU waste stored at the INEEL be removed from the INEEL STP since the waste is "designated" for disposal at WIPP, 2) That all TRU waste streams remain in the INEEL STP, but in a new section of the STP which has no enforceable milestones, and 3) That only the TRU waste streams that meet the WIPP WAC will exit the INEEL STP. Positions 1 & 2 above are both acceptable to DOE, but position 3 is not because of the potential for enforceable milestones being applied to TRU waste before it is evaluated against the WIPP WAC or treated to meet the WIPP WAC.

Since the negotiations have stalled at the technical level, the Idaho Attorney General's Office and the DOE-ID Office of Chief Counsel got involved in the specifics of the laws. Both offices have outlined their positions and provided legal background to support these positions. Again, no movement has occurred and discussions have stopped short of filing legal suits in court and been returned to the technical groups for the next round of discussion, which are scheduled for the end of January, 2002.

CONCLUSION:

A change in the law did not sufficiently explain all potential regulatory interpretations to adequately address all issues that have arisen. DEQ and DOE find themselves in such a legal ambiguity with a uncertain resolution with in any linear timeframe. The potential for this issue to be taken to court is doubtful. Unless a solution is reached in January, 2002 it is very likely that public involvement may occur.

On the bright side, DOE-ID continues to ship TRU waste to WIPP from the INEEL. As the volume of waste in storage at the INEEL continues to decrease, the likelihood of this issue maintain significant diminishes.