

memorandum

DATE: November 23, 1999

REPLY TO:
ATTN OF: Office of Environmental Policy and Assistance (EH-413):Fortune:6-7302

SUBJECT: EPA Notice of Proposed Rulemaking: Storage, Treatment, Transportation, and Disposal of Mixed Waste

TO: Distribution

Purpose of this Memo To notify DOE elements that the U.S. Environmental Protection Agency (EPA) published a *notice of proposed rulemaking (NPRM)* on November 19, 1999 (64 FR 63464) regarding potential RCRA regulatory relief for storage, treatment, transportation, and disposal of certain mixed wastes.

To request that DOE elements review and provide comments in response to this NPRM.

Regulatory Relief Proposed A "**storage and treatment conditional exemption**" from the RCRA definition of hazardous waste is proposed for certain low-level mixed wastes (LLMW) being generated, and stored and/or treated on-site by a Nuclear Regulatory Commission (NRC) or Agreement State licensee.

- **Note:** LLMW generated and regulated by DOE would not qualify for this particular conditional exemption (i.e., regarding storage and treatment).

A "**transportation and disposal conditional exemption**" from the RCRA Subtitle C regulations applicable to manifesting, transporting, and disposing of hazardous waste is proposed for LLMW and "eligible NARM."

- Any LLMW or eligible NARM waste, including such waste generated by DOE, could qualify for the transportation and disposal conditional exemption by meeting the conditions of the exemption.
- "Eligible NARM" consists of naturally-occurring or accelerator-produced radioactive material (NARM) that: (1) meets the waste acceptance criteria of a low-level radioactive waste disposal facility (LLRWDF) licensed by the NRC or an Agreement State; and (2) is contaminated with hazardous waste.
- The proposed transportation and disposal conditional exemption would not apply to high-level mixed waste or transuranic mixed waste.

Conditions of the Exemption To qualify for the proposed *transportation and disposal* conditional exemption, the following conditions will have to be met:

- The LLMW or eligible NARM waste will be required to:
 - Meet the RCRA land disposal restriction (LDR) treatment standards.
 - Meet the definition of *non-wastewater* as defined in 40 CFR 268.2(d).
 - Meet NRC or Agreement State transportation and manifest requirements [**Note:** this condition also applies to generators who self-regulate their radioactive waste management activities, such as DOE].
 - Be containerized before disposal.

- Be transported to and disposed in a LLRWDF licensed by the NRC or an Agreement State [**Note:** under the proposal, conditionally-exempt waste cannot be disposed in a DOE LLRWDF].
- The generator of the LLMW or eligible NARM waste will be required to:
 - Keep specified records and make them available during on-site RCRA inspections, or if the regulatory agency requests them.
 - Notify designated regulatory agencies and receive written confirmation that the notice was delivered.

Claiming the Exemption To claim the proposed transportation and disposal conditional exemption, the following actions would be required:

- *Before the first shipment* of a waste stream for which the exemption is claimed, notify each designated regulatory agency in writing, by certified mail, with return receipt requested; and
- *Before every shipment* to a LLRWDF, notify the LLRWDF in writing, by certified mail, with return receipt requested.

Failure to Meet the Conditions Failure to satisfy any condition would result in loss of the transportation and disposal conditional exemption.

- Loss of the exemption:
 - Would require the generator to manage the affected LLMW or eligible NARM waste immediately as RCRA hazardous waste.
 - May result in enforcement action and fines and penalties under RCRA.

Reinstating the conditional exemption. The transportation and disposal conditional exemption may be reinstated by returning to compliance with the conditions of the exemption and notifying the responsible RCRA regulatory agency that the exemption is being reclaimed.

Availability of NPRM The NPRM was published in the *Federal Register* at 64 FR 63464-63501, and can be accessed via the Internet at:

<http://www.epa.gov/epaoswer/hazwaste/radio>

Action Items DOE elements are requested to provide their comments (and available supporting data) to the Office of Environmental Policy and Assistance (EH-41) **on or before Friday, January 21, 2000**. In providing your input, please refer to the specific sections of the NPRM to which each item pertains.

- Input may be submitted (with a signed hard copy to follow) to:

FAX (202) 586-3915
 E-Mail william.fortune@eh.doe.gov

Based on the input from DOE elements, an internal analysis, and collaboration with the HWIR Focus Group, EH-41 will develop a consolidated Departmental response to the NPRM.

Contact If you have questions regarding the NPRM or this request for comments, please contact Bill Fortune at (202) 586-7302.



Raymond P. Berube
Acting Director
Office of Environmental Policy and Assistance