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FROM

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Idaho State Senate

SENATOR CLINT STENNETT

MINORITY LEADER

February 28, 2000

VIA FACSIMILE (301) 415-1757 AND U.S. MAIL

Chairman Richard A. Meserve
Nuclear Regulatory Commission
One White Flint North Building 17D1
11555 Rockville Pike
Rockville, MD 20852

Re: Disposal of Radioactive FUSRAP/Byproduct Material

Dear Chairman Meserve:

As you should know, the U.S. Army Corps of Engineers ("USACE") took over the administration of the Formerly Utilized Sites Remedial Action Program ("FUSRAP") from the Department of Energy ("DOE") in 1998. Unlike the DOE, the USACE is not self-regulating. Nevertheless, I understand that the Nuclear Regulatory Commission ("NRC") essentially has indicated that the USACE may use its own discretion in disposing of FUSRAP waste (11e.(2) material that was generated before 1978) at landfills that are unregulated for radioactive waste.

Commissioner Greta Joy Dicus indicated in a letter to Representative John D. Dingell dated July 29, 1999 that the NRC is not going to regulate the disposal of FUSRAP waste. As you may know, Idaho is not an Agreement State with the NRC, and it does not have a state agency with authority or responsibility to regulate radioactive materials. Indeed, since Idaho is not an Agreement State, Idaho may not have authority to regulate radionuclides and worker or radiation health and safety issues under section 274 of the Atomic Energy Act ("AEA") and 10 C.F.R Part 8.4. Moreover, even if Idaho were to become an Agreement State, it may not be able to regulate pre-1978 byproduct waste in view of the NRC's interpretation.

The NRC's position that Congress only wanted it to regulate 11e.(2) material generated after 1978 is not credible. This radioactive waste has the same radiological hazards regardless of when it was generated. Further, it appears sections 81, 84, and 274 of the AEA give the Commission broad authority and responsibility to insure that any byproduct material is

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managed so that public health and safety are protected. It seems clear to me that Congress intended that the NRC would regulate all byproduct materials, including FUSRAP waste.

My interest in this issue stems from the fact that the USACE has plans to ship radioactive 11e.(2) byproduct material from FUSRAP sites for disposal at a facility in my state that is operated by EnviroSAFE Services of Idaho, Inc. ("EnviroSAFE"). EnviroSAFE is permitted by the state of Idaho pursuant to the Resource Conservation and Recovery Act ("RCRA") to dispose of hazardous wastes. Attached is a copy of the section of EnviroSAFE's RCRA permit that purportedly allows it to receive FUSRAP waste.

To the best of my knowledge, Idaho has no rules or regulations in place that protect worker health and safety, the public, or the environment from radiological dangers posed by the receipt and disposal of radioactive waste at landfills in Idaho. In addition, the state does not have a radiation control program or qualified personnel who could enforce radiological health and safety or environmental requirements in Idaho if any existed. Essentially, Idaho has no regulatory program that ensures radiological health and safety in this state. Again, this responsibility rests with the NRC.

I would like to understand this issue better to ensure that the health and safety of workers at the EnviroSAFE site, the people of the state of Idaho, and Idaho's environment are being protected appropriately from radiation dangers. Needless to say, I am not an expert on radiation exposure, and I would appreciate your guidance as to the following: a) What are any radiation exposure issues presented by the radioactivity levels under EnviroSAFE's permit for FUSRAP waste disposal at its facility, and how do these limits compare with the NRC's requirements? b) What are the appropriate health and safety protections necessary for workers, the public, and the environment relative to the disposal of radioactive materials that can be disposed at EnviroSAFE's facility under its permit? c) Who has the authority and responsibility for regulating the disposal of FUSRAP and other 11e.(2) byproduct material generated before 1978 in the state of Idaho? d) What is the NRC's authority and responsibility as to the regulation of the disposal of this material?

EnviroSAFE has adopted its own radiological health and safety program for its workers. However, that program does not appear to meet the requirements that would be imposed by the NRC on an NRC-licensed facility through 10 CFR Part 20, and, apparently, no one with a background in health physics or radiation safety is responsible for this program. EnviroSAFE's program does not include monitoring requirements that evaluate internal radiation doses to workers or doses in the environment, and there are no reporting requirements. Further, with no regulatory authority and no radiation control program, it is doubtful that the state of Idaho can enforce any of EnviroSAFE's self-imposed health and safety requirements.

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This situation does not make any sense to me. We are now in a legislative session, and I have looked at ways Idaho might regulate the disposal of this 11e.(2) radioactive byproduct waste in our state. However, since Idaho is not an Agreement State and has no regulatory program for radiation health and safety, it seems clear that the NRC should simply exercise its authority and fulfill its responsibility to regulate the disposal of this material.

I would appreciate your answers to my questions and any additional input on this important issue by March 10, 2000. I understand that there may be other RCRA disposal facilities in the nation that could receive this type of radioactive material for disposal, so the issue is not limited to the state of Idaho. Accordingly, by copy of this letter to officials at the Environmental Protection Agency ("EPA"), I would appreciate EPA's response to similar questions I have posed to the NRC as follows: a) What are any radiation exposure issues presented by the radioactivity levels under Envirosafe's permit for FUSRAP waste disposal at its facility, and how do these limits compare with the EPA's requirements? b) What are the appropriate health and safety protections necessary for workers, the public, and the environment relative to the disposal of radioactive materials that can be disposed at Envirosafe's facility under its permit? c) What is the EPA's authority and responsibility as to the regulation of the disposal of this material? d) What is the EPA's position as to the disposal of this type of radioactive waste in a RCRA disposal facility?

I am sending copies of this letter to Idaho's Governor and members of Idaho's Congressional delegation to advise them of my concerns, and to ask for their help in addressing this situation. In addition, I am sending a copy of this letter to Vice President Al Gore, and I ask him to look into this matter.

Thank you.

Very truly yours,



Senator Clinton Stennett

Enclosure

cc: Governor Dirk Kempthorne w/o enclosure
Senator Larry Craig w/o enclosure
Senator Mike Crapo w/o enclosure
Representative Mike Simpson w/o enclosure
Representative Helen Chenoweth w/o enclosure

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Vice President Al Gore w/o enclosure

Carol Browner, Administrator, U.S. Environmental Protection Agency w/enclosure

Robert J. Martin, EPA, Hazardous Waste and Superfund Ombudsman w/enclosure

Frank Marcinowski, Director, Radiation Protection Division, EPA Office of Radiation and
Indoor Air w/enclosure

C-2 Preacceptance Protocol

C-2a Hazardous Waste Preacceptance Review

The preacceptance protocol has been designed to ensure that only hazardous waste streams that can be properly and safely stored, treated, and/or disposed of by ESII are approved for receipt at the facility. A two-step approach is taken by ESII. The first step is the chemical and physical characterization of the candidate waste stream by the generator. The second step is the preacceptance evaluation performed by ESII to determine the acceptability of the waste for receipt at the facility. Figure C-2 presents a logic diagram of the preacceptance protocol that is utilized at the ESII facility.

C-2a(1) FUSRAP Waste Acceptance Criteria

The following waste acceptance criteria is established for accepting radiologically contaminated waste material from FUSRAP sites administered by the Army Corps of Engineers. Although the Nuclear Regulatory Commission (NRC) does not regulate this material, NRC regulations suggest certain concentrations of radioactive material are considered unimportant. Using this as a guide ESII's consultant, Radiation Safety Associates, Inc. in Hebron, Connecticut, developed the following acceptance limits for FUSRAP materials (detailed analysis of these criteria is presented in ESII's *Waste Acceptance Criteria and Justification for FUSRAP Material*, prepared by Radiation Safety Associates, Inc.).

1. ESII may only receive FUSRAP material containing natural uranium, natural thorium, and their daughter products. ESII may not accept any material that is or has been regulated by the Atomic Energy Commission or the Nuclear Regulatory Commission.
2. Unless approved in advance by ESII, average activity concentrations may not exceed 355 pCi/g natural uranium (^{238}U) and 110 pCi/g natural thorium (^{232}Th) in any individual shipping container (e.g., rail car). Specific isotopes in the ^{238}U decay series will be evaluated against the action level of 174 pCi/g and specific isotopes in the ^{232}Th decay series will be evaluated against the action level of 55 pCi/g. ESII may accept, on a case-by-case basis, FUSRAP material that exceeds these guidelines provided that the material does not meet the definition of radioactive material as defined by the Department of Transportation in 49 CFR 173.403.
3. If individual "pockets" of activity are known to exceed or are suspected of exceeding three times the average activity concentration guidelines described above, ESII may still accept the material so long as the generator certifies that the dose rate in contact with the unshielded container does not exceed 0.5 mrem/hr (500 $\mu\text{rem/h}$) (e.g., no shielding added to the rail car).
4. The generator of the FUSRAP material must certify that the material being shipped does not meet the definition of radioactive material as defined by the Department of Transportation in 49 CFR 173.403.

FUSRAP waste acceptance criteria, as presented, when used in conjunction with an effective radiation monitoring and protection program as defined in ESII's *FUSRAP Health and Safety Manual* and *FUSRAP Material Receipt Procedures* provides adequate protection of human health and the environment. This criteria assures that the highest potential dose to a worker handling FUSRAP material at ESII should never exceed 400 mrem/year.

Figure C-2 Pre-acceptance Protocol

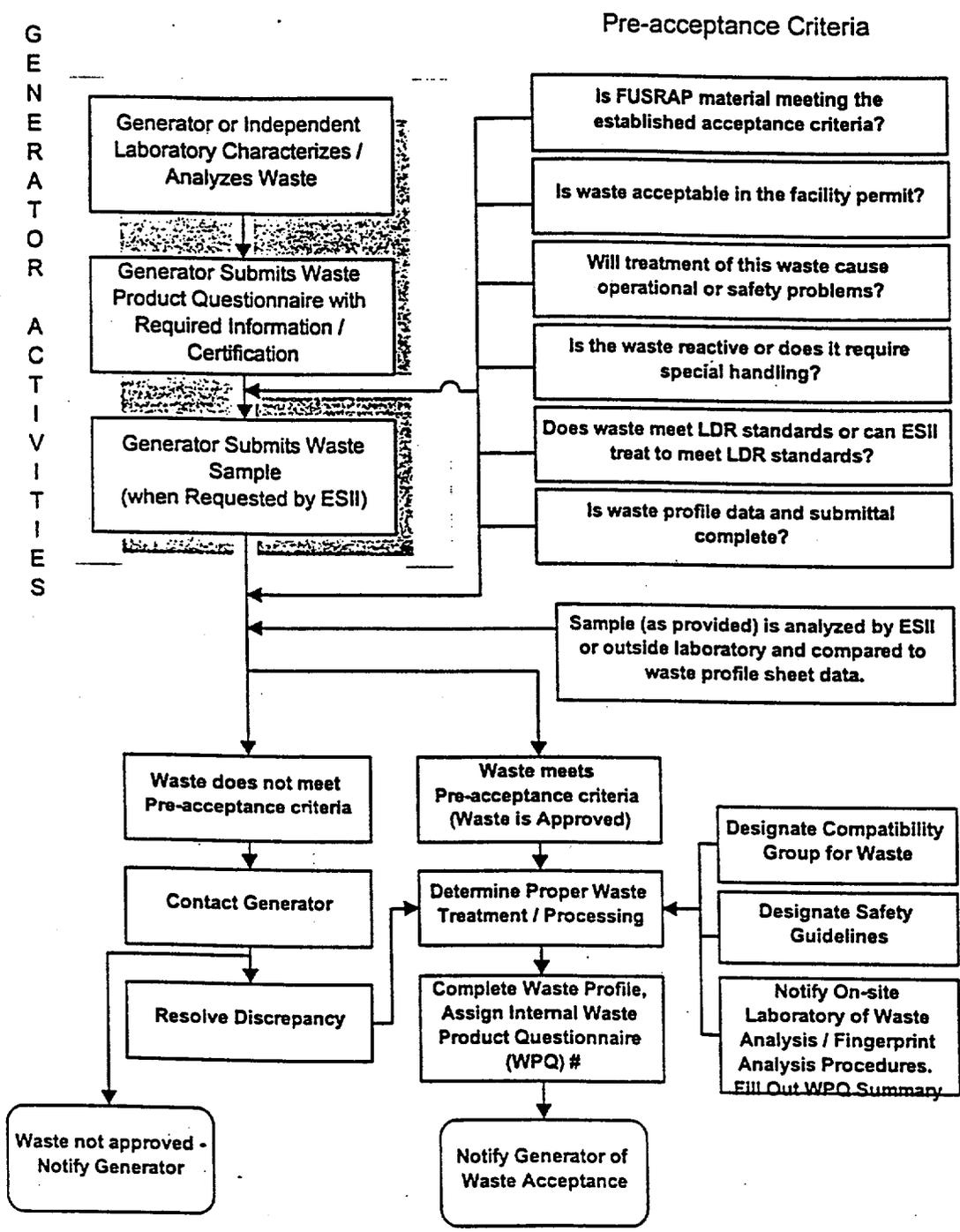


Figure C-2 Pre-acceptance Protocol