

December 16, 2004

Ms. Toni Hardesty, Director
Idaho Department of Environmental Quality
1410 North Hilton
Boise, ID 83706

Dear Ms. Hardesty:

Idaho State staff requested clarification on the U.S. Nuclear Regulatory Commission's (NRC) position on Atomic Energy Act (AEA) materials that may be disposed of at Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste disposal facilities. The specific request for clarification was asked in light of US Ecology Idaho's (USEI) request for a modification to their RCRA permit.

Our response addresses only AEA materials that are subject to NRC jurisdiction (i.e., it does not apply to AEA materials under the U.S. Department of Energy (DOE) jurisdiction). All NRC, or Agreement State, licensed AEA materials must be disposed of in accordance with the requirements in 10 CFR Part 20, Subpart K - Waste Disposal (or equivalent Agreement State regulations) unless exempted from regulation by either the general exemptions in 10 CFR Parts 30 or 40 or through specific exemptions granted under 10 CFR 30.11, 40.14, or 70.17. Since the USEI Subtitle C facility does not have an NRC license, only AEA materials that have been exempted from further regulation may be eligible for disposal at a RCRA Subtitle C facility. The State of Idaho, since it has delegated authority under RCRA, is the responsible regulatory entity to determine if exempt AEA materials may be disposed of at a RCRA Subtitle C facility within its borders.

The Idaho staff request for clarification also asked whether an authorization for disposal of material issued under 10 CFR 20.2002 could also be listed on the RCRA permit as an exemption. For off-site disposal authorized under 10 CFR 20.2002, the NRC plans to include an explicit exemption for the materials to be disposed of off-site (such as at a Subtitle C facility). Therefore, the authorization for disposal under 10 CFR 20.2002 should not be listed in the RCRA subtitle C permit as an exemption. As noted above, the exemption issued could be under either the general or specific exemption provisions in 10 CFR. Agreement States may conduct similar reviews and approvals following their compatible regulations.

If you have any questions, please contact me at 301-415-3340 or Dennis Sollenberger at 301-415-2819 or dms4@nrc.gov.

Sincerely,

/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

cc: Doug Walker, INEEL Oversight and Radiation Control
Brian Monson, Hazardous Waste Program Manager, IDEQ

Toni Hardesty

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***See previous concurrence.**

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