

December 5, 2005

Mr. Charles E. Anderson
Principal Deputy Assistant Secretary
Office of Environmental Management
U.S. Department of Energy
1000 Independence Ave, S.W.
Washington, D.C. 20585

SUBJECT: DRAFT INTERIM GUIDANCE ON CONCENTRATION AVERAGING FOR
WASTE DETERMINATIONS

Dear Mr. Anderson:

Under Section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA), the Secretary of Energy, in consultation with the U.S. Nuclear Regulatory Commission (NRC), may determine that certain radioactive waste resulting from reprocessing of spent nuclear fuel is not high level waste (HLW). In carrying out these responsibilities, the U.S. Department of Energy (DOE) has submitted two draft waste determinations for HLW tanks for NRC review. The "Draft Section 3116 Determination, Idaho Nuclear Technology and Engineering Center Tank Farm Facility" and "Draft Section 3116 Determination for Closure of Tank 19 and Tank 18 at the Savannah River Site" were submitted to the NRC in September 2005.

Prior to submittal of the two draft HLW tank waste determinations, NRC and DOE staff met on July 19, 2005, to discuss technical issues related to waste determinations, including the application of concentration averaging. The NRC staff recommended that DOE apply the principles underlying NRC's Branch Technical Position (BTP) on Concentration Averaging and Encapsulation, which has been available since January 17, 1995, and explained how to apply those principles for the HLW tanks. However, both of DOE's draft waste determinations submitted in September contain the statement that "[t]he DOE is not deciding in this draft 3116 Determination whether the waste does or does not exceed the concentration limits for Class C since there is no clearly applicable NRC guidance on applying the concentration limits in 10 CFR 61.55 to situations like [the tanks]." DOE also expressed similar concerns regarding its perception of a lack of concentration averaging guidance during other meetings with the NRC.

The NRC is publishing the attached Federal Register Notice (FRN) containing draft interim guidance for concentration averaging for waste determinations. The FRN discusses the fundamental principles of waste classification, discusses general methods for determining waste classification, and provides specific examples for the types of waste that may be analyzed in waste determinations. It should be noted that this draft interim guidance is consistent with the information provided in the July 19, 2005, meeting and applies the principles already contained in the BTP to the specific types of waste and situations typically evaluated in waste determinations for DOE sites. This draft interim guidance is being released for public comment and will be included in the Standard Review Plan for waste determination reviews that the NRC is in the process of developing.

Mr. Anderson

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Paragraph (a)(3)(B)(iii) of the NDAA requires that additional consultation be performed with the NRC for disposal plans of those wastes covered by the NDAA that exceed concentration limits for Class C low-level waste. The draft interim guidance contained within the attached FRN will allow DOE to determine and specify the waste classification in its draft waste determinations, and therefore clearly identify the appropriate clause of the NDAA under which DOE is consulting with the NRC for each waste determination.

I hope you find the attached guidance helpful as DOE continues to proceed with developing its waste determinations. If you have any questions, please call me at 301-415-7437, or call Anna Bradford, senior project manager of my staff, at 301-415-5228.

Sincerely,

/RA/

Larry W. Camper, Director
Division of Waste Management
and Environmental Protection
Office of Nuclear Material Safety
and Safeguards

Enclosure

Mr. Anderson

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Enclosure:

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