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# memorandum

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DATE: February 9, 2006

REPLY TO  
ATTN OF: EM-42 (M. Letourneau, 301-903-3532)

SUBJECT: Compliance with DOE M 435.1-1 Waste Incidental to Reprocessing (WIR) requirements and Implementation of Section 3116(a) of the National Defense Authorization Act for Fiscal Year 2005 (NDAA)

TO: Jeffrey M. Allison, Manager, Savannah River Operations Office  
Elizabeth D. Sellers, Manager, Idaho Operations Office

This memorandum provides clarification and guidance regarding the relationship between the Waste Incidental to Reprocessing (WIR) evaluation provisions of the Department of Energy (DOE) Manual 435.1-1, *Radioactive Waste Management*, and the statutory requirements of section 3116(a) of the National Defense Authorization Act for Fiscal Year (FY) 2005 (NDAA), for the purpose of mitigating any unnecessary duplication of work by DOE or contractor personnel at the Idaho Operations Office and the Savannah River Operations Office.

Based on review of the NDAA section 3116(a) requirements and evaluation WIR provisions of DOE M 435.1-1, I have determined that, for the Savannah River and Idaho Operations Offices, performance of a waste determination by DOE in accordance with NDAA section 3116(a) eliminates the need to perform an evaluation WIR determination in accordance with DOE M 435.1-1, Chapter II.B(2) for waste from reprocessing which will be disposed within the States of South Carolina and Idaho, respectively. The following analysis and guidance is provided to document DOE's position on compliance with the NDAA section 3116(a) requirements and the DOE M 435.1-1 evaluation WIR requirements.

DOE's section 3116(a) waste determinations satisfy the evaluation WIR determination requirements under DOE M 435.1-1, Chapter II.B(2), and other provisions directly related to it, as described herein. For facilities to be closed under DOE M 435.1-1, Chapter II.U, the requirements of NDAA section 3116(a) satisfy all the provisions of Chapter II.B(2), including those concerning performance objectives incorporated by reference in Chapters II.B(2), II.U.(2) and II.U.(3). Similarly, the process for coordination between Headquarters and the field for waste determinations prepared under the NDAA section 3116(a) meets the requirement of DOE M 435.1-1, Chapter I.2.F(18), for consultation and coordination between the Office of Environmental Management and the field sites. Additionally, the requirements for DOE to consult with the Nuclear Regulatory Commission (NRC) under the NDAA section 3116 for making determinations that certain

wastes from reprocessing are not high-level waste goes even further than DOE Guide 435.1-1, Chapter I.2.F(18), which only encourages DOE to involve the NRC in DOE's evaluation process for WIR determinations. Accordingly, DOE and its contractors at your sites may satisfy the evaluation WIR provisions of DOE M 435.1-1, Chapter II.B(2) when section 3116(a) criteria are applicable and utilized for waste from reprocessing to be disposed in the States of South Carolina and Idaho, as applicable. In sum, compliance with the requirements of NDAA section 3116(a) is an acceptable means of demonstrating compliance with DOE M 435.1-1 evaluation WIR provisions, including sections that cite performance objectives incorporated by reference in Chapters II.B(2), II.U.(2) and II.U.(3).

Notwithstanding this guidance, it is important to clarify that the requirements of DOE M 435.1-1 continue to be applicable for all other activities of DOE and the contractor not satisfied by NDAA section 3116(a), including the following examples: 1) waste removed from a waste storage tank which is determined via a Secretarial determination under NDAA section 3116(a) for disposal as low-level waste shall meet the low-level waste management requirements of DOE M 435.1-1 for requirements not satisfied by NDAA section 3116(a); 2) facilities and activities covered under Chapter II of DOE M 435.1-1 continue to be covered by those requirements for activities not satisfied by NDAA section 3116(a), including, as appropriate, facility closure requirements; and 3) for facilities and activities otherwise operated in accordance with the requirements of DOE M 435.1-1, Chapters III or IV, e.g., the Saltstone Disposal Facility, the NDAA section 3116(a) requirements only satisfy the Chapter II.B(2) requirements, as applicable.

The responsible DOE contracting officials at the Idaho and Savannah River Operations Offices should determine the appropriate means to disseminate this guidance to contractor personnel and to direct the contractor to follow this guidance in satisfaction of the site contracts and contractor requirements documents, as applicable.

  
James A. Rispoli  
Assistant Secretary for  
Environmental Management

cc:  
R. Schepens, Office of River Protection  
J. Swales, West Valley Demonstration Project