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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

March 2, 1993

Jim Miller, Chief  
Compliance and Enforcement Branch  
Bureau of Waste Prevention  
Massachusetts DEP  
One Winter Street  
Boston, MA 02108

Dear Mr. Miller:

This letter is a followup to the January 6, 1993 meeting between the Massachusetts Department of Environmental Protection and EPA concerning EPA's authority to regulate mixed radioactive wastes and debris. These issues were raised at this meeting relevant to the continuing cleanup activities presently being conducted at the Watertown Arsenal. The issues, identified by number, and EPA's response are provided below:

1. Does EPA have any authority to regulate mixed radioactive wastes in Massachusetts?

No. Mixed radioactive wastes are part of the Non-HWSA Cluster III RCRA program requirements. Currently, the Commonwealth of Massachusetts is not authorized for this program element. As such, EPA does not and will not have the authority to regulate mixed radioactive waste in Massachusetts until the State receives authorization.

2. Does EPA have the authority in Massachusetts to enforce the mixed radioactive debris rules recently finalized under the Hazardous and Solid Waste Amendments (HWSA)?

No. The only types of hazardous wastes that HSWA allows EPA to regulate under its own authority are those wastes that meet the definition of hazardous under the Toxicity Characteristic Leaching Procedure (TCLP) found at 40 C.F.R. § 261.24. The TCLP became effective on September 25, 1990. EPA can only regulate other non-TC hazardous wastes if a State has received authorization from EPA before the TCLP was in effect. Since mixed radioactive wastes are not part of the TCLP listings, EPA does not and will not have any authority to regulate mixed radioactive debris in Massachusetts until the State receives authorization.



3. Does EPA have the authority in Massachusetts to enforce the Land Disposal Restriction (LDR) regulations for mixed radioactive wastes?

No, for the same reasons as stated in number 2 above, mixed radioactive wastes are not part of the TCLP, and the Commonwealth of Massachusetts is not authorized for the regulation of mixed radioactive wastes by EPA. Therefore, EPA does not and will not have any authority to regulate the land disposal of this type of waste in Massachusetts until the State receives authorization.

Although EPA has not authorized the Commonwealth of Massachusetts for the regulation of mixed radioactive wastes, this does not preclude Massachusetts from regulating these wastes under its own authority.

Please contact Kenneth Rota (617) 573-5759 or Joan Serra (617) 223-5527 of my staff if we can be of further assistance.

Sincerely,



Larry Brill, Chief  
Massachusetts Waste Management Branch