



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

Policy Compendium

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

August 11, 1997

Mr. J. R. Hebert
Manager, Regulatory Affairs
Maine Yankee
320 Bath Road
Brunswick, Maine 04011

Mixed Waste

Dear Mr. Hebert:

Thank you for your letter of July 21, 1997 in which you requested that Maine should adopt the reduced civil enforcement policy promulgated in 61 FR 18588, April 26, 1996. Your letter did not request EPA to hold up or deny authorization, or to take further comment. Below we address the three issues you listed in your letter; however, we would point out that the concerns you expressed should be resolved between Maine Yankee and the State.

1. The reduced enforcement policy of 61 FR 18588: The Hazardous and Solid Waste Amendment (HSWA) Section 3004(j) prohibits storage of land disposal prohibited wastes (including mixed waste) except "for the purpose of accumulation of such quantities of hazardous wastes as are necessary to facilitate proper recovery, treatment, or disposal." Recognizing that treatment and disposal options were not available for certain mixed waste prohibited from land disposal under the Land Disposal Restrictions, the EPA initiated a policy on the civil enforcement of the storage prohibition in Section 3004(j). (56 FR 42730, August 29, 1991) This policy treated violations of section 3004(j) as reduced priorities among the EPA's potential civil enforcement actions. The policy stated that generators may be capable of storing their mixed waste for the limited duration of the policy, if they pursued prudent waste management practices. On April 26, 1996, the EPA extended the policy until April 20, 1998. (61 FR 18588) This Federal Register is very explicit in stating that the policy extension applies only to those waste streams for which no treatment technology or disposal capacity is available. The policy also states that when, during the limited term of this policy, treatment and disposal options become available, facilities must use them to be in compliance with Section 3004(j). The Maine Department of Environmental Protection (ME DEP) advised us that in the past Maine Yankee routinely sent its waste for treatment or disposal within 90 days.

The Federal Register notice also states that this policy is not binding on states with authorization for the LDR since they have independent authority to enforce LDRs and section 3004(j). Therefore, Maine, knowing the universe of its regulated community, can determine its own approach to this policy in its goal of protecting human health and the environment.



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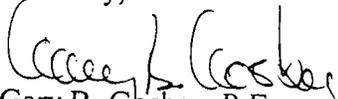
2. Imposition of the 90-day shipment requirement on all mixed waste is unworkable: The 40 CFR 262 generator requirements limit accumulation of hazardous waste on-site to 90 days without a storage permit and the need to follow the treatment, storage, and disposal regulations of 40 CFR 264 and 265. Maine's generator regulations, like the EPA's, also grants an extension (via a temporary license) of 30 days for unforeseen, temporary circumstances. In your reference to 61 FR 18588, April 26, 1996, you noted that storing mixed waste for more than 90 days is necessary because treatment technologies or disposal facilities are unavailable. Please note that 61 FR 18588 is a policy for reduced enforcement for violations of 3004(j) that would occur when facilities stored their mixed waste beyond 90 days for reasons other than proper recovery, treatment or disposal. You also noted that storing mixed waste for more than 90 days is necessary because, when treatment or disposal facilities are available, the cost of shipping off-site every 90 days is expensive. Section 3004(j) does not address the expense of disposal as a reason for storing wastes beyond 90 days. Therefore the reduced enforcement policy for civil enforcement of violations of 3004(j) as promulgated should not be read as a policy to extend the 90-day shipment requirement on the basis of expense.

3. Regulatory Stringency: The Resource Conservation and Recovery Act (RCRA) Section 3009 and 40 CFR 271.1(i) address a State's ability to promulgate rules that are more stringent and broader in scope than the Federal regulations. The EPA authorized Maine to implement specific provisions of its hazardous waste program in lieu of the EPA in 1988. At that time, Maine included PCB's and the other Maine-listed wastes in its regulations. Based on our conversations with ME DEP, we understand that Maine Yankee has not experienced difficulties in seeking treatment technologies or disposal availability for the mixed waste that it generates. If situations arise, in which a facility could not secure treatment or disposal availability for its mixed waste, the facility should work with ME DEP on a case-by-case basis.

We examined your comments in light of the basic standards that a State hazardous waste program must meet in order to qualify for final authorization and for authorization of program revisions. As Maine meets the standards for equivalency and because the reduced civil enforcement policy is not binding on states authorized for LDR, we intend to go forward with our determination to approve Maine's application.

We hope our comments on the above prove a satisfactory response to the questions you raise. If you have any additional questions, please feel free to contact Geri Mannion of my staff at (617) 565-3607.

Sincerely,



Gary B. Gosbee, P.E.

Manager, Hazardous Waste Program Unit

cc: Geri Mannion, EPA
Jeffrey Fowley, EPA
Steve Silva, EPA
Stacy Ladner, ME DEP

Maine Yankee

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July 21, 1997
JRH-97-177

Ms Geri Mannion
U.S. EPA Region 1, (CHW)
J.F.K. Federal Building
Boston, MA 02203-2211

Subject: Comments on Maine's Program Revision Application: Mixed Waste Authorization

- References:
- (a) 62 FR 34007, June 24, 1997, Maine; Final Authorization of State Hazardous Waste Management Program
 - (b) 61 FR 18588, April 26, 1996, Extension of the Policy on Enforcement of RCRA Sec. 3004(j) Storage Prohibition at Facilities Generating Mixed Radioactive/Hazardous Waste
 - (c) Maine Yankee Atomic Power Company, Wiscasset, Lincoln County, Maine, Hazardous Waste Treatment Facility Under Abbreviated License Provisions, License #O-000159-HL-A-N

Dear Ms. Mannion:

Maine Yankee is pleased to offer the following comments on EPA's authorization of the Maine Department of Environmental Protection's regulation of mixed waste.

Reference (a) authorizes the State of Maine's Department of Environmental Protection (MDEP) to regulate several clusters of hazardous waste regulations. One included cluster, Non-HSWA Cluster III, includes regulation of Radioactive Mixed Waste. Maine Yankee Atomic Power Company (Maine Yankee) is a commercial nuclear fueled electricity generating facility (the plant) located in Wiscasset, Maine. Maine Yankee is a Large Quantity Generator of hazardous waste which also generates low volumes of mixed wastes. Maine Yankee has handled and disposed of these wastes in accordance with EPA and MDEP regulations. Based on this experience, Maine Yankee offers these comments on the authorization of MDEP to regulate mixed waste.

Maine Yankee has established an effective working relationship with the MDEP staff responsible for mixed waste regulation. Maine Yankee has kept these specialists informed through dialog and periodic reports of mixed waste handling activities and obtained an Abbreviated License, Reference (c) for depressurization of aerosol cans

generated in all areas of the plant including the radiation control area.

Maine Yankee is, however, concerned that proposed application of MDEP's hazardous waste rules to hazardous components of mixed waste may have the unintended consequences of increasing MDEP regulatory effort and regulated community expense with no real environmental, public health and safety, or regulatory benefit.

The issues underlying this concern are:

- 1 Imposition of the 90 day shipment requirement on all mixed waste is unworkable
- 2 MDEP's greater hazardous waste regulation stringency makes mixed waste treatment and disposal potentially more complicated.
- 3 MDEP has not adopted EPA's policy of reduced enforcement for some mixed waste handling, Reference (b)

Each of these issues and a suggested solution are discussed below.

- 1 Mixed waste needs be stored on site at the plant for longer than 90 days for two reasons: as indicated in Reference (b) treatment or disposal for certain mixed wastes streams is unavailable and where it is available the quantity of mixed waste generated and the distance of Maine Yankee from these treatment facilities makes shipment of the wastes every 90 days prohibitively expensive.
- 2 As pointed out in Reference (a) MDEP's program is more stringent than EPA's in several areas. These areas of greater stringency could increase the volume of material which is classified as mixed waste. This increased volume could further overtax existing limited mixed waste treatment facilities where they are available and increase the amount of mixed waste held in storage where they are not. Specifically MDEP lists about 65 additional chemical products as hazardous wastes including PCBs that EPA does not list as hazardous waste. Maine Yankee knows of no licensed mixed waste treatment facilities for these additionally listed wastes.
- 3 In Reference (b) EPA acknowledged the unavailability of mixed waste treatment and disposal facilities for certain low volume mixed wastes generated at commercial nuclear power plants and extended a reduced enforcement policy for these wastes streams provided that certain conditions are met. MDEP has neither adopted this policy nor promulgated a similar policy.

Maine Yankee anticipates that its environmental staff can work with the MDEP staff on a case by case method to address these issues. MDEP should, however, adopt a policy similar to EPA's in Reference (b). This adoption would ensure that a statutory framework exists to permit both the regulator and regulated community the flexibility needed to utilize the most environmentally advantageous solution to each mixed waste stream.

Maine Yankee appreciates the opportunity to comment on this final rule. We trust that you and MDEP will consider these comments in connection with your authorization of MDEP to regulate mixed waste handling. Please contact John Arnold, telephone (voice mail): 207-798-4213, fax: 207-798-4230, Internet (e-mail) arnold@myapc.com, if you have questions or comments.

Very truly yours,



J.R. Hebert, Manager
Regulatory Affairs

c: S. Ladner, MDEP