



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

5058271544

Mr. Mike McFadden
Assistant Manager for Regulatory Compliance
US Department of Energy - Carlsbad Area Office
P.O. Box 3090
Carlsbad, NM 88221

Re: Financial Assurance Requirements for Westinghouse Isolation Division

Dear Mr. McFadden:

Thank you for the fax of the New Mexico Environment Department's (NMED) letter of September 24, 1997, regarding financial assurance requirements for Westinghouse Isolation Division as part of the permitting requirements for the Waste Isolation Pilot Plant.

My staff has reviewed the Resource Conservation and Recovery Act (RCRA) permitting compendium and the applicable regulations regarding financial assurance and determined that the Environmental Protection Agency (EPA) would exempt Westinghouse from the financial assurance requirements at 40 CFR 265. Enclosed are the compendium documents that address this issue. The policy determination is based on the January 5, 1983, letter from John Skinner (EPA) to Bradley Dillon (US Ecology), the memorandum dated May 11, 1983, from John Skinner (EPA) to Harry Seraydarian (EPA), and the memorandum dated January 30, 1984, from John Skinner (EPA) to Harry Seraydarian (EPA). However, the State may impose financial assurance requirements under State regulations.

The State of New Mexico is fully delegated to implement RCRA and their letter of September 24, 1997, clearly indicates that they believe financial assurance is appropriate at this facility. Financial assurance requirements for contractors listed as co-permittees has been proposed by other States as exemplified by Oregon proposing such assurance from Raytheon Demilitarization Company at the Umatilla Chemical Depot. The Oregon Department of Environmental Quality required the Army to submit a Class III permit modification adding the requirement to the permit.



If you have any further questions, please contact me or Nick Stone of my staff at (214) 665-7226.

Sincerely yours,



Bob Hanneschlager, P.E.

Acting Director

Multimedia Planning and Permitting Division

Enclosure

9477.1983(01)

January 5, 1983

Mr. Bradley E. Dillon
Associate General Counsel
US Ecology, Inc.
3200 Melbville Road, Suite 526
P.O. Box 7216
Louisville, Kentucky 40207

Dear Mr. Dillon:

Your letter of November 5, 1982, raises a question about the applicability of the Subpart H, Financial Responsibility requirements to a US Ecology facility. Your specific concern is the extent of your responsibility for compliance in view of the §265.140(c) exemption for States and the Federal government and the fact that your facility operates on land leased from the State of Nevada.

Section 265.140(c) states "States and the Federal government are exempt from the requirements of this subpart." The Subpart H regulations apply to owners and operators; while either party may fulfill the requirements, the Agency may take action against either or both of the parties in the event of noncompliance. The Agency interprets this exemption to mean that where one party (the owner or the operator) is an exempted party because it is a State or Federal governmental unit, the other, private sector party need not comply with the Subpart H requirements. However, a State or Federal agency owner may, of course, require the private sector operator by contractual agreement to demonstrate financial responsibility.

I suggest that you confer with staff of EPA Region IX and the state of Nevada to determine the extent and applicability of responsibility for the concerned parties under the Resource Conservation and Recovery Act regulations. You should be aware that the RCRA Subpart G regulations, which stipulate the

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requirements for performance of closure and post-closure care, do not contain any such exemption. The exemption applies only to the Subpart H regulations, which contain the requirements for proving financial responsibility for closure and post-closure care and for liability coverage.

Sincerely,

John H. Skinner
Acting Director
Office of Solid Waste

cc: Dick Procunier, Region IX

This has been retyped from the original document.

11 MAY 1983**MEMORANDUM**

SUBJECT: April 20, 1983, Memorandum on Financial Requirements

FROM: John H. Skinner, Director
Office of Solid Waste (WH-562)

TO: Harry Seraydarian, Director
Toxics and Waste Management Division, Region IX (T-1)

Your memorandum of April 20, 1983, suggested that a regulatory interpretation memorandum be written to clarify the exemption of States and the Federal government from the RCRA Subpart H, Financial Requirements (§§264.140(c) and 265.140(c)). However, the interpretation you suggest does not appear to be consistent with the regulations. Our interpretation of the regulations, confirmed by Office of General Counsel staff, is that set forth in my January 5, 1983, letter sent to Mr. Bradley E. Dillon at US Ecology, a copy of which is attached. A copy of that letter was also sent to Richard Procunier, the Region IX financial contact.

Your suggestion that EPA notify the various State and Federal agencies which may be affected by this exemption may be pursued at a later date. However, since the owners and operators of hazardous waste facilities are jointly and severally liable for the other requirements of the Resource Conservation and Recovery Act (RCRA) regulations, I am not sure that such a narrowly focused letter would be appropriate. Rather, a letter broadly addressing the potential obligations of the States and the Federal government under the RCRA regulations would be sent.

You can be sure that as we make decisions on regulatory reporting to EPA Headquarters, this particular section will be kept in mind. I am certain that should we find environmental problems caused or exacerbated by this exemption, we will make every effort to revise the regulations in a responsive manner.

Attachment

(WH-562)C. Anshelies/CA/sds/S-273/5/10/83

JAN 30, 1984

MEMORANDUM

SUBJECT: U.S. Ecology's Nevada Facility and Financial Responsibility

FROM: John H. Skinner, Director
Office of Solid Waste (WH-562)

TO: Harry Seraydarian, Director
Toxics and Waste Management Division
Region IX (T-1)

Your memorandum of April 5 requested comments on the Notice of Deficiency you sent U.S. Ecology.

While I sympathize with your desire to ensure that all owners and operators demonstrate financial responsibility, EPA is not in a position to require such compliance in this instance. Section 140(c) of the regulations clearly exempts the States and the Federal government from the Subpart H regulations. Therefore, EPA does not have authority to enforce compliance with the financial requirements since the U.S. Ecology facility is located on land owned by the State of Nevada. Only the State of Nevada may require U.S. Ecology to demonstrate financial responsibility by contractual arrangement.

This point is covered in both the January 5, 1983 letter to U.S. Ecology and the May 11, 1983 memorandum to you (copy attached). I want to reassure you that my staff had extensive conversations with your staff before the January letter was issued. I hope this clears up the matter for you.

Attachment

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