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SUMMARY OF COMMENTS/RESPONSES FEASIBILITY STUDY - OPERABLE UNIT 1 (ARARS)

02/04/91

SUMMARY OF COMMENTS/RESPONSES

FEASIBILITY STUDY - OPERABLE UNIT 1 (ARARS)
FMPC-0115-2
M. HIGGINS

Comment:

1. **The list of ARARs will need to be revised to consider any new "hybrid" alternatives that U.S. DOE proposed in the revised Initial Screening of Alternatives (ISA) report.**

Response: DOE agrees.

Action: The table of ARARs will be revised to consider all alternatives, including the "hybrid" alternatives (see Attachment A).

Comment:

2. **Compliance with ARARs is required during both the design and implementation of the remedial action, as well as the completion of the remedial action (40 CFR 300.435(b)(2). This policy does not apply to chemical-specific ARARS (55 Fed Reg 8755).**

Response: DOE agrees and recognizes that ARARs that are used to determine final remediation levels apply only at the completion of the action (55FR8755).

Action: No action required.

Comment:

3. **Post-closure requirements of 40 CFR 264.117 (page 54 of 83) are also applicable to Alternatives 4 and 5.**

Response: DOE disagrees. Alternatives 4 and 5 do not involve leaving waste in place, the condition for which 40CFR264.117 through 264.120 are applicable. Residual wastes in place are also considered in Alternatives 6 and 7.

Action: No action required.

Comment:

4. **It is not clear why the ARARs presented in 40 CFR 264, Subparts J, K, and L (Page 57 of 83) are listed for Alternatives 1 through 5. None of these alternatives were described in the ISA report as involving the use of tanks, surface impoundments, or waste piles.**

Response: DOE disagrees. Alternatives 1 and 2 entail construction of a slurry wall. Soil removed during the slurry wall construction will be stored on property in a waste pile or surface impoundment, which will be required to meet the requirements in the subparts. Alternatives 4, 5, 6, and 7 require removal of the waste for treatment. Treatment will be performed in tanks that are subject to the requirements of Subpart J. Alternatives 1 through 7 involve waste segregation/separation that require use of tanks which must meet the requirements from Subpart J.

Action: No action required.

Comment:

5. **The requirements of 40 CFR 264.301 (Page 58 of 83) should be considered an ARAR for Alternative 5 because an off-site landfill must comply with these requirements.**

Response: DOE agrees.

Action: Alternative 5 will be added to the ARAR table for 40CFR264.301.

Comment:

6. **The requirements of 10 CFR 61 Subpart D (Page 74 of 83) should be considered an ARAR for Alternative 5 because the off-site landfill must comply with these requirements.**

Response: DOE disagrees. Off-site actions must comply with all legally applicable requirements but the concept of relevant and appropriate requirements is not available for off-site action (CERCLA Compliance With Other Laws Manual, August 1988, p. xvii). Because 10CFR61, Subpart D, is a relevant and appropriate requirement, inclusion of Alternative 5 is not warranted.

Action: No action required.

Comment:

7. **If the risk associated with an alternative is greater than 10E-4, MCLGs are ARARs along with MCLs.**

Response: This comment reflects a simplification of the discussion of the "Use of MCLGs" from the EPA report CERCLA Compliance With Other Laws Manual: Interim Final (EPA/540/G-89/006, August 1988), pp. xix and xx. This explanation has been superseded by 40CFR300.430(e)(2)(i)(B) and is not consistent with this comment. MCLGs are currently listed as guidance to be considered (TBC) in the table of potential ARARs.

Action: MCLGs will be listed as chemical-specific, relevant and appropriate requirements in the revised tables of ARARs for Operable Unit 1.

Comment:

8. **There needs to be a general explanation why ARARs are applicable or relevant and appropriate and why specific TBCs are necessary.**

Response: The format of the table of proposed ARARs was agreed upon by EPA and DOE in Chicago in June 1990. Brief explanations of why ARARs are applicable or relevant and appropriate and why specific TBCs are necessary are given in the "Rationale for Implementation" column for each ARAR. Each ARAR and the rationale for its implementation were discussed with EPA during meetings between EPA and DOE on Operable Unit 1 ARARs on July 13, 1990, and July 26, 1990. Discussions from subsequent meetings between EPA and DOE on ARARs for other Operable Units have also been considered in the development of the ARARs table for Operable Unit 1. DOE is willing to respond to specific comments on why specific ARARs are applicable or relevant and appropriate and why specific TBCs are necessary.

Action: No action is required.

Comment:

9. **The list of proposed RCRA ARARs must be reviewed with respect to applicable guidance regarding the definition of ARARs. U.S. DOE must distinguish between substantive requirements that must be complied with and administrative requirements that are not ARARs. For example, administrative requirements include documentation, reporting, record-keeping, etc. To the extent that cited RCRA provisions are administrative provisions, they should be deleted.**

Response: See response to Comment No. 8. The table of proposed ARARs for Operable Unit 1 has been reviewed with respect to applicable guidance regarding the definition of ARARs. In developing the table, DOE has distinguished between substantive requirements that must be complied with and administrative requirements that are not ARARs. These topics have also been discussed between EPA and DOE during the several ARARs meetings for the FMPC RI/FS during 1990. DOE is willing to respond to specific comments on the list of proposed RCRA ARARs.

Action: No action required.

Comment:

10. **TBCs are only used where there is not an ARAR or where the existing ARARs are not protective. The TBCs listed must be reviewed in light of this standard.**

Response: See response to Comment Nos. 8 and 9. DOE has listed proposed TBCs where there is not an ARAR or where the existing ARARs are not protective. The tables of ARARs for Operable Unit 1 also include specific TBCs requested by EPA for inclusion in addition to the TBCs that DOE proposed. DOE has reviewed the listed TBCs in light of the NCP requirements for TBCs and considers the list of TBCs to be correct. DOE is willing to respond to specific comments on specific TBCs.

Action: No action required.

Comment:

11. **The asbestos NESHAP requirement should be listed as relevant and appropriate.**

Response: DOE agrees.

Action: DOE will add 40CFR61, Subpart M as an action-specific, relevant and appropriate requirement. Additionally, OAC3745-20-05, which is currently a chemical-specific, applicable requirement, will be changed to be an action-specific, applicable requirement.

Comment:

12. **The Ohio Administrative Code (OAC) should be cited, not the Code of Federal Regulations, where applicable (for portions of the program for which Ohio is authorized). The CFR citation may be added for reference only, but this should be clarified.**

Response: The table of potential ARARs for Operable Unit 1 presents requirements that have been identified during an iterative process that began more than a year ago. During the identification process involving EPA, Ohio EPA, and DOE, EPA has insisted that the federal requirement be listed first and any Ohio regulation (OAC) could also be listed after the CFR citation. For those requirements arising from only an Ohio regulation, the Ohio

requirement was cited. Also, Ohio regulations that are more stringent than federal regulations have been reviewed for inclusion in the ARARs table. 993

Action: The detailed description of ARARs and evaluation of compliance with ARARs within the FS Report will list the regulations where Ohio is "authorized."

Comment:

13. U.S. DOE's Draft Regulatory Guide for Radiological Effluent Monitoring/Environmental Surveillance should be included as a TBC. This document was formerly known as U.S. DOE Order 5400.xy.

Response: DOE agrees with the exception that, as of this response, DOE Order 5400.xy has not been issued as a Regulatory Guide.

Action: DOE Order 5400.xy will be added to the tables as an action-specific TBC.

Comment:

14. The use of 10 CFR 61 as an ARAR is not applicable or relevant and appropriate for the following reasons:

A. 10 CFR 61.1(b)(2) states that these regulations do not apply to byproduct material to which the regulations at 10 CFR 40 (Appendix A) do apply:

"The regulations in this part do not apply to (2) (sic) disposal of uranium or thorium tailings or wastes (byproduct materials as defined in 40.4(a-1) as provided for in Part 40 of this chapter in quantities of greater than 10,000 kilograms and containing more than fie (sic) (5) millicuries of radium-226."

B. Total mass of material and total radium-226 quantities exceed values specified at 10 CFR 61.1(b) (2) for all the waste pits.

C. The degree of health hazards and containment requirements of this material are identical to those of uranium/thorium mill tailings. 10 CFR Part 61 offers no explicit means of classifying these wastes as either Class A, B, C, or greater than C low level radioactive wastes, since 10 CFR 61.55 Table 1 does not contain radium, uranium, or thorium, and since 10 CFR Part 40 applies to this type of material.

D. The requirements for the most restrictive waste category in Part 61 (Class C-intruder barrier must function for 500 years) are not as stringent as those at 10 CFR Part 40 - Appendix A or at 40 CFR 192 (containment of radioactive materials for 1000 years) which are specifically designed to address the hazard associated with intermediate concentrations of long-lived alpha emitters.

E. There are no groundwater protection or containment requirements in 10 CFR Part 61.

Response: DOE disagrees. Because of the known presence of fission products in wastes contained within this operable unit, 10CFR61 satisfies the selection criteria for a requirement to be both relevant and appropriate and is included in addition to 10CFR40 Appendix A and 40CFR192. Where in conflict, the most health protective of these requirements will serve as guidance.

Action: No action required.

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ATTACHMENT A

The following regulations require the addition of the indicated alternative numbers for the Operable Unit 1 potential ARARs:

Regulation Number	Chemical, Location or Action Specific	Alternative Number(s) to be Added
OAC 3745-20-05	Chemical	6 & 7
40CFR50.6	Chemical	6 & 7
40CFR50.12	Chemical	6 & 7
40CFR6.302(a&g)	Location	6 & 7
40CFR257.3-1	Location	6 & 7
40CFR258.12	Location	6 & 7
40CFR264.18	Location	6 & 7
Executive Order 11988	Location	6 & 7
Executive Order 11990	Location	6 & 7
33CFR320.2(f)	Action	6 & 7
40CFR122.41	Action	6 & 7
40CFR122.44	Action	6 & 7
40CFR241.200-201	Action	6 & 7
40CFR241.202-211	Action	6 & 7
40CFR260, Appendix I	Action	6 & 7
40CFR261.7	Action	6 & 7
40CFR261.10	Action	6 & 7
40CFR262.34	Action	6 & 7
40CFR262, Subpart D	Action	6 & 7
40CFR264, Subpart B	Action	6 & 7
40CFR264, Subpart C	Action	6 & 7
40CFR264, Subpart D	Action	6 & 7
40CFR264, Subpart E	Action	6 & 7
40CFR264.75-77	Action	6 & 7
40CFR264, Subpart F	Action	6 & 7
40CFR264.111	Action	6 & 7
40CFR264.171-178	Action	6 & 7
40CFR264, Subpart J (tanks)	Action	6 & 7
40CFR264, Subpart K	Action	6 & 7
40CFR264, Subpart L	Action	6 & 7
40CFR264.301	Action	6 & 7
40CFR264.310	Action	6 & 7
40CFR268	Action	6 & 7
40CFR268, Subpart D	Action	7
40CFR268.50	Action	6 & 7
OAC3745-17-08	Action	6 & 7
OAC3745-31	Action	6 & 7
ORC3704.03 and OAC3745-15-07	Action	6 & 7
10CFR40, Appendix A	Action	6 & 7
10CFR61, Subpart C	Action	6 & 7
10CFR61, Subpart D	Action	6 & 7
40CFR192, Subparts B and C	Action	6 & 7
DOE Order 5400.5, Chapter IV	Action	6 & 7
DOE Order 5820.2A, Chapter III	Action	6 & 7
DOE Order 5820.2A, Chapter IV	Action	6 & 7
USNRC Reg. Guide 1.86	Action	6 & 7
DOE UMTRA Guidance	Action	6 & 7