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**REQUESTING A MEETING CONCERNING THE  
APPLICATION OF EPA STANDARDS FOR THE  
MANAGEMENT AND DISPOSAL OF HIGH-LEVEL**

**3-23-92**

**DOE-WASH/USEPA  
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LETTER**



**Department of Energy**

Washington, DC 20585

March 23, 1992

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The Honorable Herb Tate  
Assistant Administrator for Enforcement  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

The Honorable William G. Rosenberg  
Assistant Administrator for Air and Radiation  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

Dear Messrs. Tate and Rosenberg:

We are writing to you to request a meeting concerning the application of the Environmental Protection Agency's (EPA) standards for the management and disposal of high-level and transuranic nuclear waste (40 CFR Part 191) to certain wastes under evaluation through the on-going cleanup process at the Department of Energy's (DOE) Fernald Environmental Management Project (FEMP), near Fernald, Ohio. The FEMP is listed on EPA's National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Through its environmental restoration program at FEMP, DOE is committed to achieving cleanup remedies which, at a minimum, assure the protection of human health and the environment. DOE and EPA Region V executed a CERCLA Consent Agreement for cleanup of FEMP, effective June 1990. The Consent Agreement was amended in September 1991.

EPA Region V and EPA's Office of Radiation Programs have advised DOE that they believe wastes contained in silos at FEMP are similar to transuranic waste because of the wastes' high activity levels and half-lives, and that these wastes should be disposed of in compliance with EPA's environmental standards for the management and disposal of high-level radioactive waste, spent nuclear fuel and transuranic radioactive waste (40 CFR Part 191).

DOE believes that EPA should not apply the Part 191 standards to the clean-up of the silo wastes. Instead, DOE believes that a remedy which meets the requirements of both 40 CFR Part 192 and applicable DOE Orders, and which provides greater protection against human intrusion will provide adequate protection to human health and the environment.

Even if DOE were to apply 40 CFR Part 191 standards to the clean-up of the silo wastes, additional protection from the human intruder would be needed. In order to select the most appropriate remedy for the clean-up of these wastes that will provide adequate protection against human intrusion, DOE will evaluate alternative technologies (such as vitrification, solidification and a state-of-the-art engineered disposal facility) through the CERCLA Remedial Investigation/Feasibility Study (RI/FS) process. DOE and EPA, in accordance with CERCLA and the National Contingency Plan (NCP), will evaluate all feasible alternatives against established criteria and assess the performance of each potential alternative. As part of this evaluation, DOE will assess the extent to which the implementation of the alternative technologies to the clean-up of the silo wastes would provide the needed protection.

As you may be aware, DOE, other Federal agencies, and scientific groups have expressed concern about the possible future application of 40 CFR Part 191 in ways which were not anticipated and intended during the promulgation of the rule. This issue concerning the use of Part 191 as a CERCLA clean-up standard for the silo wastes clean-up has further added to DOE's concerns regarding the repromulgation of the court-vacated 40 CFR 191, Subpart B rule. If Part 191 is intended to apply to wastes such as the waste at FEMP, the analysis in the repromulgation of Subpart B should consider such wastes. DOE would like to resolve this issue in an expeditious manner without adversely affecting EPA's on-going 40 CFR 191, Subpart B rulemaking. Further, although the issue was raised in the context of the FEMP site, it also may have ramifications for DOE's Niagara Falls Storage Site.

Related correspondence is enclosed for your convenience. Supporting analysis for DOE's position is set forth in Enclosure 4.

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We are seeking a meeting with your offices on this issue so that our two agencies may informally resolve this matter now, and thereby avoid time and resource consuming formal dispute resolution procedures at a later date. We have requested Mr. Ray Berube and Mr. Pat Whitfield of our staffs to contact Mr. McCall and Ms. Oge of your staffs to arrange a meeting with you. We appreciate your support in encouraging our respective senior staffs to address this issue.

Sincerely,



Paul L. Ziemer, Ph.D.  
Assistant Secretary  
Environment, Safety and Health



Leo P. Duffy  
Assistant Secretary  
Environmental Restoration  
and Waste Management

Enclosures

cc: Ms. Margo Oge, Director, EPA Office of Radiation  
Programs  
Mr. Tad McCall, Deputy Assistant Administrator for Federal  
Facilities Enforcement  
Mr. Valdas Adamkus, Regional Administrator, EPA Region V  
Mr. Robert Tiller, Manager, DOE FEMP Site Office