

memorandum

Rocky Flats Office

DATE: NOV 09 1993

REPLY TO
ATTN OF: ERD:BKT:12419

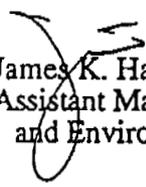
SUBJECT: Environmental Restoration Operable Units 4, 9, 10, and 15 Project Managers

TO: Tom Lukow, Director, Waste Programs Division

Please find attached an issue paper regarding the disposition of active units under the RFP Interagency Agreement (IAG). Active units are currently causing problems in that IAG milestones listed in Table 6 will not be met, potentially exposing the DOE to fines and penalties. Recommendations are provided for resolving the issue.

Please review and concur on the issue paper prior to our initiating discussions with the Environmental Protection Agency and Colorado Department of Health on these units. If possible, concurrence should be provided by November 1, 1993.

Questions or concerns should be directed to Bruce Thatcher of my staff at extension 3532.


James K. Hartman
Assistant Manager for Transition
and Environmental Restoration

Attachment

ADMIN RECORD

A-0009-000210

3/4

ISSUE PAPER

DISPOSITION OF "ACTIVE" UNITS UNDER THE RFP IAG

ISSUES

- 1) The DOE RFO has liability for IAG stipulated penalties and RCRA/CHWA enforcement actions under the RFP Permit for not meeting the milestones listed in Table 6, Attachment II, of the RFP IAG. Many milestones require work in "active" units some of which fall under RCRA/CHWA.
- 2) There is no existing placeholder in the IAG for "active" units.
- 3) Both CDH and EPA have requested through correspondence that DOE include radionuclides in the RCRA/CHWA Part B Permit.
- 4) The CDH has requested that RCRA/CHWA closure be performed in accordance with approved RFI/RI Workplans and IM/IRA Decision Documents as opposed to using the specific closure requirements contained in 40CFR Parts 264 and 265 and C.C.R.

BACKGROUND

"Active" units under the IAG present a problem in that characterization, RCRA/CHWA closure (if required) and remediation pursuant to CERCLA and RCRA/CHWA corrective action can or should not be initiated until these units are no longer in use. Table 6, Attachment II, of the IAG contains milestones for these activities which are subject to IAG stipulated penalties as well as enforcement actions under the RFP RCRA/CHWA Part B Permit. The IAG as it currently exists has no placeholder for these "active" units and has no suitable mechanism to delay required activities. Extensions under Part 42 require the length of an extension to be specified which is undetermined for these units. Modification to Work under Part 32 has been formally proposed to EPA and CDH for the delay of IAG activities at the 750 and 904 Pads in OU 10; however, we have not yet received a response to our May 1993 request. It appears that Amendment to Agreement under Part 41 holds the greatest promise for creating a placeholder for "active" units that will assure the EPA and CDH that all required activities are performed once their use is no longer required by the DOE.

"Active" units under the RFP IAG fall under the following three categories:

- 1) permitted units in the RFP RCRA/CHWA Part B Permit,
- 2) interim status units under the RCRA/CHWA, and
- 3) neither permitted nor have interim status.

The current "active" units in question are as follows:

- 1) OU 9 - Original Process Waste Line
 - o Tanks 5, 24, 25, 26 - permitted (RCRA Units 40.04, 40.05, 40.20-40.26, 40.30, 40.31, 40.39-40.41). Efforts are currently underway to gain an exemption for these units under the wastewater treatment unit exclusion. Once this is granted by CDH, these units will be neither permitted nor have interim status.
 - o Tanks 4, 6, 7, 8, 9, 11, 19, 28, 30, 32, 38 - neither permitted nor have interim status
- 2) OU 10 - Other Outside Closures
 - o 750 Pad - permitted (RCRA Unit 25)
 - o 904 Pad - permitted (RCRA Units 15A, 15B and 35?)

- 3) OU 15 - Inside Building Closures
 - o IHSS 212 - permitted (RCRA Unit 63)
 - o Original Uranium Chip Roaster - interim status

Guidance from CDH and EPA regarding RCRA/CHWA closure has been provided to DOE RFO and is Attached. Both CDH and EPA have stated that it is up to DOE to adhere to milestones listed in Table 6, Attachment II, of the IAG while acknowledging that, because of the "active" status of the units, it is impossible for required IAG activities to proceed. This contradiction is both unworkable and unacceptable to DOE. In addition, both EPA and CDH have proposed that radionuclides be added to the RCRA/CHWA Part B permit. The CDH has stated that IM/IRA decision documents coupled with Phase I RFI/RI Reports will fulfill the requirements of CHWA closure. They have further stated that closure plans submitted for interim status and permitted units should include relevant portions of approved RFI/RI Workplans. All these requirements are excess to normal RCRA/CHWA requirements and offer CDH additional control over radionuclides which they are not allowed by statute.

DISCUSSION

Utilizing Part 41, Amendment to Agreement, to produce an Addendum to the IAG is the preferred option for providing a placeholder for "active" units. This will provide for future RCRA/CHWA closure of both permitted and interim status "active" units and CERCLA response actions along with RCRA/CHWA corrective action for all "active" units. In addition, these activities will be tied to 1) the unit becoming inactive, and/or 2) the completion of D&D. Thus, a date will not be required for the initiation of IAG activities. Instead, IAG activities will be initiated when conditions will allow them to proceed. The continued use of certain of these units (e.g., 750 and 904 Pads) for environmental restoration waste storage should be stressed to EPA and CDH. The availability of waste storage capacity will enhance our efforts to meet IAG remediation milestones in the future.

In addition to providing a placeholder for "active" units in the IAG, use of Part 41 will enable DOE to eliminate current liabilities under the IAG and RCRA/CHWA Part B Permit for missing IAG milestones. It is likely, however, that EPA and CDH will attempt to require the insertion of a schedule for IAG activities dependent upon the date that units are declared inactive.

With regard to inclusion of radionuclides in the RCRA/CHWA Part B Permit, DOE RFO should invoke the exclusion for source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, as solid wastes excluded by definition from being hazardous. This exclusion is located at Section 1004 (27) of RCRA, as amended. In this manner, radionuclides would be regulated under CERCLA and would be addressed after RCRA/CHWA closure and/or concurrently with RCRA/CHWA corrective action.

For closure plans under RCRA/CHWA, DOE RFO needs to insure that both statutory and regulatory requirements are met. Although CDH's May 29, 1992 letter to DOE RFO regarding the closure process for RCRA units under the IAG stated that IM/IRA decision documents and Phase I RFI/RI Reports will satisfy closure requirements, these

documents address radionuclides in addition to hazardous waste. Thus, DOE RFO has the option of including those portions of Phase I RFI/RI activities exclusive of radionuclides or can simply follow the statutory and regulatory requirements for closure.

RECOMMENDATIONS

- 1) Initiate informal discussions with EPA and CDH regarding the utilization of Part 41 of the IAG to create a placeholder for "active" units. Follow up the discussions with a formal transmittal of an appropriate amendment.
- 2) Do not include radionuclides in the RCRA/CHWA Part B Permit.
- 3) Initiate informal discussions with CDH regarding the closure plan requirements. DOE RFO waste management personnel feel very strongly that closure plans should follow the statutory and regulatory requirements of the RCRA and CHWA rather than the approved Phase I RFI/RI Work Plans because of workload and regulatory implications. This is potentially a much larger issue than "active" units under the IAG.